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Legislative History – Montana Session Law

Chapter: 388 Session L: 2013

Bill Number: HB 345

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Business & Labor	Committee: Judiciary
Hearing Date(s): 2/6/2013	Hearing Date(s): 3/5/2013
Committee Report: 2/13/2013	Committee Report: 4/4/2013

Free Conference Committee

Hearing Date(s): 4/18/2013

Conference Committee Report: 4/18/2013

Compiler Notes

Compiled by: SK Marshall

Date: 4/4/2025

Notes: Audio/Video recordings can be found here:
https://sg001-harmony.sliq.net/00309/Harmony/en

Thank you!

AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. Definitions. As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is made to:

(a) an employee, officer, ~~or~~ agent, or other representative of a governmental entity; or ~~to~~

(b) a contractor, grantee, or other ~~recipient~~ person, whether under contract or not, if any portion of the money, property, or services requested or demanded ~~issued from or was provided by a governmental entity.~~ is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:

(i) provides or has provided any portion of the money, property, or services requested or demanded; or

(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

(5) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property, or services.

(6) "Obligation" means an established duty, whether fixed or not, arising from:

(a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

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~~(5)~~(7) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust, or other legal or business entity.

(8) "State" means the state of Montana."

Section 2. Section 17-8-403, MCA, is amended to read:

"17-8-403. False claims -- procedures -- penalties. (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than ~~$5,000~~ $5,500 and not more than ~~$10,000~~ $11,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains ~~because of the person's act~~, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented ~~to an officer or employee of the governmental entity~~ a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement material to ~~get~~ a false or fraudulent claim ~~paid or approved by the governmental entity~~;

(c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid~~

~~by the governmental entity~~ commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the governmental entity and~~, with the intent to defraud the governmental entity or to willfully conceal the property,~~ knowingly delivers or causes to be delivered less than all of the property or money ~~than the amount for which the person receives a certificate or receipt~~;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement ~~to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors~~ material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than ~~$5,000~~ $5,500 and not more than ~~$10,000~~ $11,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains ~~because of the person's act~~ if the court finds all of the following:

~~(i)~~(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(ii)~~(b) The person fully cooperated with any investigation of the act by the government attorney.

~~(iii)~~(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

~~(b)~~(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

~~(3)~~(4) Liability under this section is joint and several for any act committed by two or more persons.

~~(4)~~(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in:

(i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) the news media.

(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or Title 2, chapter 6, is not a public disclosure for purposes of this section.

(c) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

~~(5)~~(7) A person may not file a complaint or civil action~~:~~

~~(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;~~ brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises.

~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.~~

(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.

(9) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity."

Section 3. Section 17-8-404, MCA, is amended to read:

"17-8-404. Limitation of actions. (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must be brought by the later of:

(a) 6 years after the date on which the violation was committed; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.

(3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint."

Section 4. Section 17-8-410, MCA, is amended to read:

"17-8-410. Distribution of damages and civil penalty. (1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned~~,~~ and initiated~~, or knowingly participated in~~ the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 5. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to ~~an amount or~~ reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails

in the action. ~~A~~ A defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees~~, which must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs~~. If the governmental entity does not intervene, it is not responsible for any of the defendant's fees and costs."

Section 6. Section 17-8-412, MCA, is amended to read:

"17-8-412. ~~Prohibitions on employers -- employee~~ Retaliatory actions prohibited -- remedies. (1) A governmental entity, ~~or~~ private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, agent, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity, ~~or~~ private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, agent, or contractor in the terms and conditions of employment, agency, or contract because of the ~~employee's~~ disclosure by the employee, agent, or contractor of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) ~~(a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:~~

~~(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;~~

~~(ii) back pay plus interest on the back pay;~~

~~(iii) compensation for any special damages sustained as a result of the discrimination; and~~

~~(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.~~

~~(b) An employee may file an action for the relief provided in this subsection (3).~~

An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or more violations of this part.

(4) Relief under subsection (3) includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. A civil action may be brought in the appropriate district court of the state for the relief provided in this subsection.

(5) A civil action under this section may not be brought more than 3 years after the date on which the retaliation occurred."

Section 7. Reporting. Beginning February 15, 2014, and by February 15 of each year, the attorney general shall submit to the law and justice interim committee a report containing the following information:

(1) the number of cases filed under the Montana False Claims Act, Title 17, chapter 8, part 4, that were pending in the state during the previous calendar year;

(2) the number of cases filed under the Montana False Claims Act that were settled during the previous calendar year;

(3) the number of cases filed under the Montana False Claims Act in which judgment was entered during the previous calendar year;

(4) the total proceeds paid to the state and the total proceeds paid to the qui tam plaintiffs in cases filed under the Montana False Claims Act during the previous calendar year; and

(5) the number of qui tam cases pending in other jurisdictions involving the state in the previous calendar year.

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective July 1, 2013.

Section 11. Applicability. [This act] applies to proceedings begun on or after July 1, 2013.

- END -

I hereby certify that the within bill,

HB 0345, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day

of _____, 2013.

President of the Senate

Signed this _____ day

of _____, 2013.

HOUSE BILL NO. 345

INTRODUCED BY C. SMITH, BLASDEL, FITZPATRICK, KNUDSEN, VANCE, ZOLNIKOV

BY REQUEST OF THE ATTORNEY GENERAL

AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
05/06/13	Chapter Number Assigned				
05/06/13	(H) Signed by Governor				
04/26/13	(H) Transmitted to Governor				
04/25/13	(S) Signed by President				
04/24/13	(H) Signed by Speaker				
04/24/13	(C) Printed - Enrolled Version Available				
04/24/13	(H) Returned from Enrolling				
04/24/13	(C) Printed - New Version Available				
04/24/13	(H) Sent to Enrolling				
04/23/13	(S) 3rd Reading Free Conference Committee Report Adopted		48	2	
04/23/13	(S) Scheduled for 3rd Reading				
04/22/13	(S) 2nd Reading Free Conference Committee Report Adopted		46	3	
04/22/13	(S) Scheduled for 2nd Reading				
04/20/13	(H) 3rd Reading Free Conference Committee Report Adopted		97	3	
04/20/13	(H) Scheduled for 3rd Reading				
04/19/13	(H) 2nd Reading Free Conference Committee Report Adopted		95	5	
04/19/13	(S) Free Conference Committee Report Received				
04/19/13	(H) Scheduled for 2nd Reading				
04/18/13	(H) Free Conference Committee Report Received				
04/18/13	(S) Hearing	(S) Free Conference			
04/18/13	(S) Free Conference Committee Appointed				
04/15/13	(H) Free Conference Committee Appointed				
04/15/13	(H) 2nd Reading Senate Amendments Not Concurred		64	36	
04/15/13	(H) Scheduled for 2nd Reading				
04/08/13	(S) Returned to House with Amendments				
04/08/13	(S) 3rd Reading Concurred		50	0	
04/08/13	(S) Scheduled for 3rd Reading				
04/06/13	(S) 2nd Reading Concurred		50	0	
04/06/13	(S) Scheduled for 2nd Reading				
04/05/13	(C) Printed - New Version Available				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/05/13	(S) Committee Report--Bill Concurred as Amended	(S) Judiciary			
04/04/13	(S) Committee Executive Action--Bill Concurred as Amended	(S) Judiciary	12	0	
03/05/13	(S) Hearing	(S) Judiciary			
02/26/13	(S) Referred to Committee	(S) Judiciary			
02/26/13	(S) First Reading				
02/20/13	(H) Transmitted to Senate				
02/19/13	(H) 3rd Reading Passed		95	3	
02/19/13	(H) Scheduled for 3rd Reading				
02/18/13	(H) 2nd Reading Passed		99	1	
02/18/13	(H) Scheduled for 2nd Reading				
02/13/13	(C) Printed - New Version Available				
02/13/13	(H) Committee Report--Bill Passed as Amended	(H) Business and Labor			
02/13/13	(H) Committee Executive Action--Bill Passed as Amended	(H) Business and Labor	20	0	
02/06/13	(H) Hearing	(H) Business and Labor			
01/31/13	(C) Introduced Bill Text Available Electronically				
01/30/13	(H) First Reading				
01/30/13	(H) Referred to Committee	(H) Business and Labor			
01/30/13	(H) Introduced				
01/30/13	(C) Draft Delivered to Requester				
01/29/13	(C) Draft Ready for Delivery				
01/29/13	(C) Draft in Assembly/Executive Director Review				
01/29/13	(C) Draft in Final Drafter Review				
01/28/13	(C) Bill Draft Text Available Electronically				
01/28/13	(C) Draft in Input/Proofing				
01/28/13	(C) Draft to Drafter - Edit Review				
01/28/13	(C) Draft in Legal Review				
01/25/13	(C) Draft to Requester for Review				
01/18/13	(C) Draft Request Received				

AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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(i) provides or has provided any portion of the money, property, or services requested or demanded; or

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(b) knowingly makes, uses, or causes to be made or used a false record or statement material to ~~get~~ a false or fraudulent claim ~~paid or approved by the governmental entity~~;

(c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid~~

~~by the governmental entity~~ commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the governmental entity and~~, with the intent to defraud the governmental entity or to willfully conceal the property,~~ knowingly delivers or causes to be delivered less than all of the property or money ~~than the amount for which the person receives a certificate or receipt~~;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement ~~to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors~~ material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than ~~$5,000~~ $5,500 and not more than ~~$10,000~~ $11,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains ~~because of the person's act~~ if the court finds all of the following:

~~(i)~~(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(ii)~~(b) The person fully cooperated with any investigation of the act by the government attorney.

~~(iii)~~(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

~~(b)~~(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

~~(3)~~(4) Liability under this section is joint and several for any act committed by two or more persons.

~~(4)~~(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in:

(i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) the news media.

(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or Title 2, chapter 6, is not a public disclosure for purposes of this section.

(c) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

~~(5)~~(7) A person may not file a complaint or civil action~~:~~

~~(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;~~ brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises.

~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.~~

(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.

(9) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity."

Section 3. Section 17-8-404, MCA, is amended to read:

"17-8-404. Limitation of actions. (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must be brought by the later of:

(a) 6 years after the date on which the violation was committed; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.

(3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint."

Section 4. Section 17-8-410, MCA, is amended to read:

"17-8-410. Distribution of damages and civil penalty. (1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned~~,~~ and initiated~~, or knowingly participated in~~ the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 5. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to ~~an amount or~~ reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails

in the action. ~~A~~ A defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees~~, which must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs~~. If the governmental entity does not intervene, it is not responsible for any of the defendant's fees and costs."

Section 6. Section 17-8-412, MCA, is amended to read:

"17-8-412. ~~Prohibitions on employers -- employee~~ Retaliatory actions prohibited -- remedies. (1) A governmental entity, ~~or~~ private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, agent, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity, ~~or~~ private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, agent, or contractor in the terms and conditions of employment, agency, or contract because of the ~~employee's~~ disclosure by the employee, agent, or contractor of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) ~~(a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:~~

~~(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;~~

~~(ii) back pay plus interest on the back pay;~~

~~(iii) compensation for any special damages sustained as a result of the discrimination; and~~

~~(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.~~

~~(b) An employee may file an action for the relief provided in this subsection (3).~~

An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or more violations of this part.

(4) Relief under subsection (3) includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. A civil action may be brought in the appropriate district court of the state for the relief provided in this subsection.

(5) A civil action under this section may not be brought more than 3 years after the date on which the retaliation occurred."

Section 7. Reporting. Beginning February 15, 2014, and by February 15 of each year, the attorney general shall submit to the law and justice interim committee a report containing the following information:

(1) the number of cases filed under the Montana False Claims Act, Title 17, chapter 8, part 4, that were pending in the state during the previous calendar year;

(2) the number of cases filed under the Montana False Claims Act that were settled during the previous calendar year;

(3) the number of cases filed under the Montana False Claims Act in which judgment was entered during the previous calendar year;

(4) the total proceeds paid to the state and the total proceeds paid to the qui tam plaintiffs in cases filed under the Montana False Claims Act during the previous calendar year; and

(5) the number of qui tam cases pending in other jurisdictions involving the state in the previous calendar year.

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective July 1, 2013.

Section 11. Applicability. [This act] applies to proceedings begun on or after July 1, 2013.

- END -

I hereby certify that the within bill,

HB 0345, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day

of _____, 2013.

President of the Senate

Signed this _____ day

of _____, 2013.

HOUSE BILL NO. 345

INTRODUCED BY C. SMITH, BLASDEL, FITZPATRICK, KNUDSEN, VANCE, ZOLNIKOV

BY REQUEST OF THE ATTORNEY GENERAL

AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

HOUSE BILL NO. 345

INTRODUCED BY C. SMITH, BLASDEL, FITZPATRICK, KNUDSEN, VANCE, ZOLNIKOV

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. Definitions. As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is made to:

(a) an employee, officer, ~~or~~ agent, or other representative of a governmental entity; or ~~to~~

(b) a contractor, grantee, or other ~~recipient~~ person, whether under contract or not, if any portion of the money, property, or services requested or demanded ~~issued from or was provided by a governmental entity.~~ is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:

(i) provides or has provided any portion of the money, property, or services requested or demanded; or

(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

(5) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property, or services.

(6) "Obligation" means an established duty, whether fixed or not, arising from:

(a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(b) a fee-based or similar relationship;

(c) a statute or regulation; or

(d) the retention of any overpayment.

~~(5)~~(7) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust, or other legal or business entity.

(8) "STATE" MEANS THE STATE OF MONTANA."

Section 2. Section 17-8-403, MCA, is amended to read:

"17-8-403. False claims -- procedures -- penalties. (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than ~~$5,000~~ ~~$6,000~~ $5,500 and not more than ~~$10,000~~ ~~$12,000~~ $11,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains ~~because of the person's act~~, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented ~~to an officer or employee of the governmental entity~~ a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement material to ~~get~~ a false or fraudulent claim ~~paid or approved by the governmental entity~~;

(c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid~~

~~by the governmental entity~~ commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the governmental entity and~~, with the intent to defraud the governmental entity or to willfully conceal the property,~~ knowingly delivers or causes to be delivered less than all of the property or money ~~than the amount for which the person receives a certificate or receipt~~;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement ~~to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors~~ MATERIAL TO AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO A GOVERNMENTAL ENTITY OR KNOWINGLY CONCEALS OR KNOWINGLY AND IMPROPERLY AVOIDS OR DECREASES AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO A GOVERNMENTAL ENTITY; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than ~~$5,000~~ ~~$6,000~~ $5,500 and not more than ~~$10,000~~ ~~$12,000~~ $11,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains ~~because of the person's act~~ if the court finds all of the following:

~~(i)~~(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(ii)~~(b) The person fully cooperated with any investigation of the act by the government attorney.

~~(iii)~~(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

~~(b)~~(3) A person who violates the provisions of this section is also liable to the governmental entity for the

expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

~~(3)~~(4) Liability under this section is joint and several for any act committed by two or more persons.

~~(4)~~(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in ~~a~~:

(i) A criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) A state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) THE news media ~~report~~.

(B) THE PRODUCTION OF A RECORD PURSUANT TO ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION OR TITLE 2, CHAPTER 6, IS NOT A PUBLIC DISCLOSURE FOR PURPOSES OF THIS SECTION.

~~(b)~~(C) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

~~(5)~~(7) A person may not file a complaint or civil action~~:~~

~~(a) brought under 17-8-406 against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;~~ BROUGHT UNDER 17-8-406 AGAINST THE STATE OR AN OFFICER OR EMPLOYEE OF THE STATE ARISING FROM CONDUCT BY THE OFFICER OR EMPLOYEE WITHIN THE SCOPE OF THE OFFICER'S OR EMPLOYEE'S DUTIES TO THE STATE UNLESS THE OFFICER OR EMPLOYEE HAS A FINANCIAL INTEREST IN THE CONDUCT UPON WHICH THE COMPLAINT OR CIVIL ACTION ARISES.

~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative~~

~~civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.~~

(8) THE AMOUNT OF THE CIVIL PENALTY SET FORTH IN SUBSECTIONS (1) AND (2) MUST BE ADJUSTED FOR INFLATION IN A MANNER CONSISTENT WITH THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990, PUBLIC LAW 101-410.

~~(8)~~(9) IF A GOVERNMENTAL ENTITY DOES NOT INTERVENE, THE PERSON WHO INITIATED THE ACTION HAS THE SAME RIGHT TO CONDUCT THE ACTION AS THE GOVERNMENT ATTORNEY WOULD HAVE HAD IF THE GOVERNMENTAL ENTITY HAD INTERVENED, INCLUDING THE RIGHT TO INSPECT GOVERNMENT RECORDS AND INTERVIEW OFFICERS AND EMPLOYEES OF THE GOVERNMENTAL ENTITY."

Section 3. Section 17-8-404, MCA, is amended to read:

"17-8-404. Limitation of actions. (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must be brought by the later of:

(a) 6 years after the date on which the violation was committed; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.

(3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in

intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint."

Section 4. Section 17-8-410, MCA, is amended to read:

"17-8-410. Distribution of damages and civil penalty. (1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned~~,~~ and initiated~~, or knowingly participated in~~ the violation of 17-8-403, the

court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 5. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to ~~an amount or~~ reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. ~~A~~ ~~If the governmental entity does not intervene, a~~ A defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees~~, which must be~~

~~equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs~~. IF THE GOVERNMENTAL ENTITY DOES NOT INTERVENE, IT IS NOT RESPONSIBLE FOR ANY OF THE DEFENDANT'S FEES AND COSTS."

Section 6. Section 17-8-412, MCA, is amended to read:

"17-8-412. ~~Prohibitions on employers -- employee~~ RETALIATORY ACTIONS PROHIBITED -- remedies. (1) A governmental entity, ~~or~~ private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, ~~officer, agency,~~ AGENT, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity, ~~or~~ private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, ~~officer, agency,~~ AGENT, or contractor in the terms and conditions of employment, agency, or contract because of the ~~employee's~~ disclosure by the employee, ~~officer, agency,~~ AGENT, or contractor of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) ~~(a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:~~

~~(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;~~

~~(ii) two times back pay plus interest on the back pay;~~

~~(iii) compensation for any special damages sustained as a result of the discrimination; and~~

~~(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.~~

~~(b) An employee, officer, agency, or contractor may file an action for the relief provided in this subsection (3).~~

~~(4) A civil action filed under this section may not be brought more than 3 years from the date on which the act of retaliation occurred.~~ AN EMPLOYEE, CONTRACTOR, OR AGENT IS ENTITLED TO ALL RELIEF NECESSARY TO MAKE THE EMPLOYEE, CONTRACTOR, OR AGENT WHOLE IF THE EMPLOYEE, CONTRACTOR, OR AGENT IS DISCHARGED, DEMOTED, SUSPENDED, THREATENED, HARASSED, OR IN ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE OF LAWFUL ACTS DONE BY THE EMPLOYEE, CONTRACTOR, OR AGENT OR ASSOCIATED OTHERS IN FURTHERANCE OF AN ACTION UNDER THIS PART OR OTHER EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THIS PART.

(4) RELIEF UNDER SUBSECTION (3) INCLUDES REINSTATEMENT WITH THE SAME SENIORITY STATUS THE EMPLOYEE, CONTRACTOR, OR AGENT WOULD HAVE HAD BUT FOR THE DISCRIMINATION, TWO TIMES THE AMOUNT OF BACK PAY, INTEREST ON THE BACK PAY, AND COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE DISCRIMINATION, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY FEES. A CIVIL ACTION MAY BE BROUGHT IN THE APPROPRIATE DISTRICT COURT OF THE STATE FOR THE RELIEF PROVIDED IN THIS SUBSECTION.

(5) A CIVIL ACTION UNDER THIS SECTION MAY NOT BE BROUGHT MORE THAN 3 YEARS AFTER THE DATE ON WHICH THE RETALIATION OCCURRED."

NEW SECTION. **SECTION 7. REPORTING.** BEGINNING FEBRUARY 15, 2014, AND BY FEBRUARY 15 OF EACH YEAR, THE ATTORNEY GENERAL SHALL SUBMIT TO THE LAW AND JUSTICE INTERIM COMMITTEE A REPORT CONTAINING THE FOLLOWING INFORMATION:

(1) THE NUMBER OF CASES FILED UNDER THE MONTANA FALSE CLAIMS ACT, TITLE 17, CHAPTER 8, PART 4, THAT WERE PENDING IN THE STATE DURING THE PREVIOUS CALENDAR YEAR;

(2) THE NUMBER OF CASES FILED UNDER THE MONTANA FALSE CLAIMS ACT THAT WERE SETTLED DURING THE PREVIOUS CALENDAR YEAR;

(3) THE NUMBER OF CASES FILED UNDER THE MONTANA FALSE CLAIMS ACT IN WHICH JUDGMENT WAS ENTERED DURING THE PREVIOUS CALENDAR YEAR;

(4) THE TOTAL PROCEEDS PAID TO THE STATE AND THE TOTAL PROCEEDS PAID TO THE QUI TAM PLAINTIFFS IN CASES FILED UNDER THE MONTANA FALSE CLAIMS ACT DURING THE PREVIOUS CALENDAR YEAR; AND

(5) THE NUMBER OF QUI TAM CASES PENDING IN OTHER JURISDICTIONS INVOLVING THE STATE IN THE PREVIOUS CALENDAR YEAR.

NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2013.

NEW SECTION. **Section 11. Applicability.** [This act] applies to proceedings begun on or after July 1, 2013.

- END -

HOUSE BILL NO. 345

INTRODUCED BY C. SMITH, BLASDEL, FITZPATRICK, KNUDSEN, VANCE, ZOLNIKOV

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. Definitions. As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is made to:

(a) an employee, officer, ~~or~~ agent, or other representative of a governmental entity; or ~~to~~

(b) a contractor, grantee, or other ~~recipient~~ person, whether under contract or not, if any portion of the money, property, or services requested or demanded ~~issued from or was provided by a governmental entity.~~ is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:

(i) provides or has provided any portion of the money, property, or services requested or demanded; or

(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the

state; or

(c) a unit of the Montana university system.

(4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

(5) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property, or services.

(6) "Obligation" means an established duty, whether fixed or not, arising from:

(a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(b) a fee-based or similar relationship;

(c) a statute or regulation; or

(d) the retention of any overpayment.

~~(5)~~(7) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust, or other legal or business entity.

(8) "STATE" MEANS THE STATE OF MONTANA."

Section 2. Section 17-8-403, MCA, is amended to read:

"17-8-403. False claims -- procedures -- penalties. (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than ~~$5,000~~ $6,000 and not more than ~~$10,000~~ $12,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains ~~because of the person's act~~, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented ~~to an officer or employee of the governmental entity~~ a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement material to ~~get~~ a false or fraudulent claim ~~paid or approved by the governmental entity~~;

(c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid by the governmental entity~~ commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the

governmental entity and~~, with the intent to defraud the governmental entity or to willfully conceal the property,~~ knowingly delivers or causes to be delivered less than all of the property or money ~~than the amount for which the person receives a certificate or receipt~~;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement ~~to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors~~ MATERIAL TO AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO A GOVERNMENTAL ENTITY OR KNOWINGLY CONCEALS OR KNOWINGLY AND IMPROPERLY AVOIDS OR DECREASES AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO A GOVERNMENTAL ENTITY; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than ~~$5,000~~ $6,000 and not more than ~~$10,000~~ $12,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains ~~because of the person's act~~ if the court finds all of the following:

~~(i)~~(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(ii)~~(b) The person fully cooperated with any investigation of the act by the government attorney.

~~(iii)~~(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

~~(b)~~(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

~~(3)~~(4) Liability under this section is joint and several for any act committed by two or more persons.

~~(4)~~(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in ~~a~~:

(i) A criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) A state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) THE news media ~~report~~.

(B) THE PRODUCTION OF A RECORD PURSUANT TO ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION OR TITLE 2, CHAPTER 6, IS NOT A PUBLIC DISCLOSURE FOR PURPOSES OF THIS SECTION.

~~(b)~~(C) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

~~(5)~~(7) A person may not file a complaint or civil action~~:~~

~~(a) brought under 17-8-406 against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;~~. BROUGHT UNDER 17-8-406 AGAINST THE STATE OR AN OFFICER OR EMPLOYEE OF THE STATE ARISING FROM CONDUCT BY THE OFFICER OR EMPLOYEE WITHIN THE SCOPE OF THE OFFICER'S OR EMPLOYEE'S DUTIES TO THE STATE UNLESS THE OFFICER OR EMPLOYEE HAS A FINANCIAL INTEREST IN THE CONDUCT UPON WHICH THE COMPLAINT OR CIVIL ACTION ARISES.

~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or~~

~~administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.~~

(8) IF A GOVERNMENTAL ENTITY DOES NOT INTERVENE, THE PERSON WHO INITIATED THE ACTION HAS THE SAME RIGHT TO CONDUCT THE ACTION AS THE GOVERNMENT ATTORNEY WOULD HAVE HAD IF THE GOVERNMENTAL ENTITY HAD INTERVENED, INCLUDING THE RIGHT TO INSPECT GOVERNMENT RECORDS AND INTERVIEW OFFICERS AND EMPLOYEES OF THE GOVERNMENTAL ENTITY."

Section 3. Section 17-8-404, MCA, is amended to read:

"17-8-404. Limitation of actions. (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must be brought by the later of:

(a) 6 years after the date on which the violation was committed; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.

(3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint."

Section 4. Section 17-8-410, MCA, is amended to read:

"17-8-410. Distribution of damages and civil penalty. (1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned~~,~~ and initiated~~, or knowingly participated in~~ the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the

proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 5. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to ~~an amount or~~ reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. ~~A If the governmental entity does not intervene, a~~ A defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees~~, which must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs~~. IF THE GOVERNMENTAL ENTITY DOES NOT INTERVENE, IT IS NOT RESPONSIBLE FOR ANY OF THE DEFENDANT'S FEES AND COSTS."

Section 6. Section 17-8-412, MCA, is amended to read:

"17-8-412. ~~Prohibitions on employers -- employee~~ RETALIATORY ACTIONS PROHIBITED -- remedies. (1) A governmental entity, ~~or~~ private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, ~~officer, agency,~~ AGENT, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity, ~~or~~ private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, ~~officer, agency,~~ AGENT, or contractor in the terms and conditions of employment, agency, or contract because of the ~~employee's~~ disclosure by the employee, ~~officer, agency,~~ AGENT, or contractor of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) ~~(a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:~~

~~(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;~~

~~(ii) two times back pay plus interest on the back pay;~~

~~(iii) compensation for any special damages sustained as a result of the discrimination; and~~

~~(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.~~

~~(b) An employee, officer, agency, or contractor may file an action for the relief provided in this subsection (3).~~

~~(4) A civil action filed under this section may not be brought more than 3 years from the date on which the act of retaliation occurred.~~ AN EMPLOYEE, CONTRACTOR, OR AGENT IS ENTITLED TO ALL RELIEF NECESSARY TO MAKE THE EMPLOYEE, CONTRACTOR, OR AGENT WHOLE IF THE EMPLOYEE, CONTRACTOR, OR AGENT IS DISCHARGED, DEMOTED, SUSPENDED, THREATENED, HARASSED, OR IN ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE OF LAWFUL ACTS DONE BY THE EMPLOYEE, CONTRACTOR, OR AGENT OR ASSOCIATED OTHERS IN FURTHERANCE OF AN ACTION UNDER THIS PART OR OTHER EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THIS PART.

(4) RELIEF UNDER SUBSECTION (3) INCLUDES REINSTATEMENT WITH THE SAME SENIORITY STATUS THE EMPLOYEE, CONTRACTOR, OR AGENT WOULD HAVE HAD BUT FOR THE DISCRIMINATION, TWO TIMES THE AMOUNT OF BACK PAY, INTEREST ON THE BACK PAY, AND COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE DISCRIMINATION, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY FEES. A CIVIL ACTION MAY BE BROUGHT IN THE APPROPRIATE DISTRICT COURT OF THE STATE FOR THE RELIEF PROVIDED IN THIS SUBSECTION.

(5) A CIVIL ACTION UNDER THIS SECTION MAY NOT BE BROUGHT MORE THAN 3 YEARS AFTER THE DATE ON WHICH THE RETALIATION OCCURRED."

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2013.

NEW SECTION. **Section 10. Applicability.** [This act] applies to proceedings begun on or after July 1, 2013.

- END -

HOUSE BILL NO. 345

INTRODUCED BY C. SMITH, BLASDEL, FITZPATRICK, KNUDSEN, VANCE, ZOLNIKOV

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. Definitions. As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is made to:

(a) an employee, officer, ~~or~~ agent, or other representative of a governmental entity; or ~~to~~

(b) a contractor, grantee, or other ~~recipient~~ person, whether under contract or not, if any portion of the money, property, or services requested or demanded ~~issued from or was provided by a governmental entity.~~ is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:

(i) provides or has provided any portion of the money, property, or services requested or demanded; or

(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the

state; or

(c) a unit of the Montana university system.

(4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

(5) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property, or services.

(6) "Obligation" means an established duty, whether fixed or not, arising from:

(a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(b) a fee-based or similar relationship;

(c) a statute or regulation; or

(d) the retention of any overpayment.

~~(5)~~(7) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust, or other legal or business entity.

(8) "STATE" MEANS THE STATE OF MONTANA."

Section 2. Section 17-8-403, MCA, is amended to read:

"17-8-403. False claims -- procedures -- penalties. (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than ~~$5,000~~ $6,000 and not more than ~~$10,000~~ $12,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains ~~because of the person's act~~, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented ~~to an officer or employee of the governmental entity~~ a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement material to ~~get~~ a false or fraudulent claim ~~paid or approved by the governmental entity~~;

(c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid by the governmental entity~~ commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the

governmental entity and~~, with the intent to defraud the governmental entity or to willfully conceal the property,~~ knowingly delivers or causes to be delivered less than all of the property or money ~~than the amount for which the person receives a certificate or receipt~~;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement ~~to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors~~ MATERIAL TO AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO A GOVERNMENTAL ENTITY OR KNOWINGLY CONCEALS OR KNOWINGLY AND IMPROPERLY AVOIDS OR DECREASES AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO A GOVERNMENTAL ENTITY; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than ~~$5,000~~ $6,000 and not more than ~~$10,000~~ $12,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains ~~because of the person's act~~ if the court finds all of the following:

~~(i)~~(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(ii)~~(b) The person fully cooperated with any investigation of the act by the government attorney.

~~(iii)~~(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

~~(b)~~(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

~~(3)~~(4) Liability under this section is joint and several for any act committed by two or more persons.

~~(4)~~(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in ~~a~~:

(i) A criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) A state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) THE news media ~~report~~.

(b) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

~~(5)~~(7) A person may not file a complaint or civil action~~:~~

~~(a) brought under 17-8-406 against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;~~. BROUGHT UNDER 17-8-406 AGAINST THE STATE OR AN OFFICER OR EMPLOYEE OF THE STATE ARISING FROM CONDUCT BY THE OFFICER OR EMPLOYEE WITHIN THE SCOPE OF THE OFFICER'S OR EMPLOYEE'S DUTIES TO THE STATE.

~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on~~

~~which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.~~"

Section 3. Section 17-8-404, MCA, is amended to read:

"17-8-404. Limitation of actions. (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must be brought by the later of:

(a) 6 years after the date on which the violation was committed; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.

(3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint."

Section 4. Section 17-8-410, MCA, is amended to read:

"17-8-410. Distribution of damages and civil penalty. (1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned~~,~~ and initiated~~, or knowingly participated in~~ the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 5. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to ~~an amount or~~ reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. ~~A~~ ~~If the governmental entity does not intervene, a~~ A defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees~~, which must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs~~. IF THE GOVERNMENTAL ENTITY DOES NOT INTERVENE, IT IS NOT RESPONSIBLE FOR ANY OF THE DEFENDANT'S FEES AND COSTS."

Section 6. Section 17-8-412, MCA, is amended to read:

"17-8-412. ~~Prohibitions on employers -- employee~~ RETALIATORY ACTIONS PROHIBITED -- remedies. (1) A governmental entity, ~~or~~ private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, ~~officer, agency,~~ AGENT, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity, ~~or~~ private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, ~~officer, agency,~~ AGENT,

or contractor in the terms and conditions of employment, agency, or contract because of the ~~employee's~~ disclosure by the employee, ~~officer, agency,~~ AGENT, or contractor of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

~~(3) (a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:~~

~~(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;~~

~~(ii) two times back pay plus interest on the back pay;~~

~~(iii) compensation for any special damages sustained as a result of the discrimination; and~~

~~(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.~~

~~(b) An employee, officer, agency, or contractor may file an action for the relief provided in this subsection (3).~~

~~(4) A civil action filed under this section may not be brought more than 3 years from the date on which the act of retaliation occurred.~~ AN EMPLOYEE, CONTRACTOR, OR AGENT IS ENTITLED TO ALL RELIEF NECESSARY TO MAKE THE EMPLOYEE, CONTRACTOR, OR AGENT WHOLE IF THE EMPLOYEE, CONTRACTOR, OR AGENT IS DISCHARGED, DEMOTED, SUSPENDED, THREATENED, HARASSED, OR IN ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE OF LAWFUL ACTS DONE BY THE EMPLOYEE, CONTRACTOR, OR AGENT OR ASSOCIATED OTHERS IN FURTHERANCE OF AN ACTION UNDER THIS PART OR OTHER EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THIS PART.

(4) RELIEF UNDER SUBSECTION (3) INCLUDES REINSTATEMENT WITH THE SAME SENIORITY STATUS THE EMPLOYEE, CONTRACTOR, OR AGENT WOULD HAVE HAD BUT FOR THE DISCRIMINATION, TWO TIMES THE AMOUNT OF BACK PAY, INTEREST ON THE BACK PAY, AND COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE DISCRIMINATION, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY FEES. A CIVIL ACTION MAY BE BROUGHT IN THE APPROPRIATE DISTRICT COURT OF THE STATE FOR THE RELIEF PROVIDED IN THIS SUBSECTION.

(5) A CIVIL ACTION UNDER THIS SECTION MAY NOT BE BROUGHT MORE THAN 3 YEARS AFTER THE DATE ON WHICH THE RETALIATION OCCURRED."

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable

from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2013.

NEW SECTION. **Section 10. Applicability.** [This act] applies to proceedings begun on or after July 1, 2013.

- END -

HOUSE BILL NO. 345

INTRODUCED BY C. SMITH

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. Definitions. As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is made to:

(a) an employee, officer, ~~or~~ agent, or other representative of a governmental entity; or ~~to~~

(b) a contractor, grantee, or other ~~recipient~~ person, whether under contract or not, if any portion of the money, property, or services requested or demanded ~~issued from or was provided by a governmental entity.~~ is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:

(i) provides or has provided any portion of the money, property, or services requested or demanded; or

(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

(5) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property, or services.

(6) "Obligation" means an established duty, whether fixed or not, arising from:

(a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(b) a fee-based or similar relationship;

(c) a statute or regulation; or

(d) the retention of any overpayment.

~~(5)~~(7) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust, or other legal or business entity."

Section 2. Section 17-8-403, MCA, is amended to read:

"17-8-403. False claims -- procedures -- penalties. (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than ~~$5,000~~ $6,000 and not more than ~~$10,000~~ $12,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains ~~because of the person's act~~, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented ~~to an officer or employee of the governmental entity~~ a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement material to ~~get~~ a false or fraudulent claim ~~paid or approved by the governmental entity~~;

(c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid by the governmental entity~~ commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the

governmental entity and~~, with the intent to defraud the governmental entity or to willfully conceal the property,~~ knowingly delivers or causes to be delivered less than all of the property or money ~~than the amount for which the person receives a certificate or receipt~~;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than ~~$5,000~~ $6,000 and not more than ~~$10,000~~ $12,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains ~~because of the person's act~~ if the court finds all of the following:

~~(i)~~(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(ii)~~(b) The person fully cooperated with any investigation of the act by the government attorney.

~~(iii)~~(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

~~(b)~~(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

~~(3)~~(4) Liability under this section is joint and several for any act committed by two or more persons.

~~(4)~~(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and

conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in a:

(i) criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) news media report.

(b) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

~~(5)~~(7) A person may not file a complaint or civil action~~:~~

~~(a)~~ brought under 17-8-406 against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity~~;~~.

~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures~~

~~for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.~~"

Section 3. Section 17-8-404, MCA, is amended to read:

"17-8-404. Limitation of actions. (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must be brought by the later of:

(a) 6 years after the date on which the violation was committed; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.

(3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in intervention must relate back to the filing date of the original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint."

Section 4. Section 17-8-410, MCA, is amended to read:

"17-8-410. Distribution of damages and civil penalty. (1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the

proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned~~,~~ and initiated~~, or knowingly participated in~~ the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 5. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the

governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to ~~an amount or~~ reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. ~~A~~ If the governmental entity does not intervene, a defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees~~, which must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs~~."

Section 6. Section 17-8-412, MCA, is amended to read:

"17-8-412. Prohibitions on employers -- employee remedies. (1) A governmental entity, ~~or~~ private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, officer, agency, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity, ~~or~~ private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, officer, agency, or contractor in the terms and conditions of employment, agency, or contract because of the ~~employee's~~ disclosure by the employee, officer, agency, or contractor of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) (a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) two times back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee, officer, agency, or contractor may file an action for the relief provided in this subsection (3).

(4) A civil action filed under this section may not be brought more than 3 years from the date on which the act of retaliation occurred."

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2013.

NEW SECTION. **Section 10. Applicability.** [This act] applies to proceedings begun on or after July 1, 2013.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
63rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Tom Berry, on February 6, 2013 at 9:00 A.M., in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Tom Berry, Chair (R)
Rep. Carlie Boland, Vice Chair (D)
Rep. Daniel R. Salomon, Vice Chair (R)
Rep. Christy Clark (R)
Rep. Amanda Curtis (D)
Rep. Steve Fitzpatrick (R)
Rep. Edward Greef (R)
Rep. Roger A. Hagan (R)
Rep. Chuck Hunter (D)
Rep. Mike Lang (R)
Rep. Jonathan McNiven (R)
Rep. David (Doc) Moore (R)
Rep. Reilly Neill (D)
Rep. Gordon Pierson Jr (D)
Rep. Scott Reichner (R)
Rep. Cary Smith (R)
Rep. Tom Steenberg (D)
Rep. Jeffrey W. Welborn (R)

Members Excused: Rep. Rae Peppers (D)
Rep. Carolyn Squires (D)

Members Absent: None

Staff Present: Ellen Bush, Committee Secretary
Bart Campbell, Legislative Services Division (LSD)

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 345, 2/4/2013
Executive Action: HB 87, 264, 280, 321, 333, 347

00:17:02 Chair Berry
EXHIBIT(buh26a01)

HEARING ON HB 345

Opening Statement by Sponsor:
00:17:32 Rep. Cary Smith (R), HD 55, opened the hearing on HB 345, Revise false claims act.

Proponents' Testimony:
00:21:09 Kenneth Varns, Assistant Attorney General, Department of Justice (DOJ)
EXHIBIT(buh26a02)
00:29:13 Al Smith, Montana Trial Lawyers Association (MTLA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:33:19 Rep. Hunter
00:33:51 Mr. Varns, DOJ
00:34:55 Rep. Hagan
00:35:22 Mr. Varns, DOJ
00:35:41 Rep. Hagan
00:36:01 Mr. Varns, DOJ
00:37:09 Rep. Hagan
00:37:30 Mr. Varns, DOJ
00:38:37 Rep. Hagan
00:39:03 Rep. Smith
00:39:30 Mr. Varns, DOJ
00:40:30 Chair Berry

Closing by Sponsor:
00:40:43 Rep. Smith

00:42:52 Recessed
01:20:14 Reconvened

EXECUTIVE ACTION ON HB 87

01:20:21 **Motion:** Rep. Salomon moved that **HB 87 DO PASS**.

01:20:40 **Motion:** Rep. Salomon moved that **HB 87 BE AMENDED**.
EXHIBIT(buh26a03)

Discussion:
01:21:45 Bart Campbell, LSD
01:22:16 Jesse Laslovich, State Auditor's Office (SAO)

01:24:27 **Vote:** Motion carried unanimously by voice vote. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

01:24:40 **Motion/Vote:** Rep. Salomon moved that **HB 87 DO PASS AS AMENDED**. Motion carried 19-1 by roll call vote with Rep. Smith voting no. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 264

01:26:20 **Motion/Vote:** Rep. Salomon moved that **HB 264 DO PASS**. Motion carried 18-2 by voice vote with Rep. McNiven and Rep. Reichner voting no. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 280

01:27:08 **Motion:** Rep. Salomon moved that **HB 280 DO PASS**.

01:27:39 **Motion:** Rep. Salomon moved that **HB 280 BE AMENDED**.
EXHIBIT(buh26a04)

Discussion:
01:28:39 Rep. Smith

01:28:44 **Vote:** Motion carried unanimously by voice vote. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

01:28:55 **Motion:** Rep. Salomon moved that **HB 280 DO PASS AS AMENDED**.

Discussion:
01:29:20 Rep. Hunter

01:30:00 **Vote:** Motion carried 11-9 by roll call vote with Rep. Boland, Rep. Curtis, Rep. Hunter, Rep. Neill, Rep. Peppers, Rep. Pierson, Rep. Squires, Rep. Steenberg and Rep. Welborn voting no. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

Note: HB 280 awaiting the arrival of fiscal note in Committee. Bill will remain in Committee until further notice.

EXECUTIVE ACTION ON HB 283

01:30:46 **Motion:** Rep. Salomon moved that **HB 283 DO PASS**.

Discussion:
01:30:58 Rep. Hunter

01:31:01 Rep. Salomon **WITHDREW MOTION HB 283 DO PASS**

EXECUTIVE ACTION ON HB 321

01:31:09 **Motion:** Rep. Salomon moved that **HB 321 DO PASS**.

Discussion:
01:31:31 Rep. Boland

01:31:50 **Vote:** Motion carried 12-8 by roll call vote with Rep. Boland, Rep. Curtis, Rep. Hunter, Rep. Neill, Rep. Peppers, Rep. Pierson, Rep. Squires and Rep. Steenberg voting no. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 333

01:33:05 **Motion:** Rep. Salomon moved that **HB 333 DO PASS**.

01:33:17 **Motion:** Rep. Salomon moved that **HB 333 BE AMENDED**.
EXHIBIT(buh26a05)

01:33:56 **Vote:** Motion carried unanimously by voice vote. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

01:34:03 **Motion/Vote:** Rep. Salomon moved that **HB 333 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 347

01:34:13 **Motion/Vote:** Rep. Salomon moved that **HB 347 DO PASS**. Motion carried unanimously by voice vote. Rep. McNiven, Rep. Peppers and Rep. Squires voted by proxy.

01:34:53 Chair Berry

ADJOURNMENT

Adjournment: 01:36:12

Ellen Bush, Secretary

eb

Additional Documents:

Additional Documents:

EXHIBIT(buh26aad.pdf)

EXHIBIT 2
DATE 2/6/13
HB 345

False Claims Act Revisions

House Bill 345

Author: Kenneth Varns
Assistant Attorney General
Medicaid Fraud Control Unit/ Division of Criminal Investigation

I. WHAT IS THE FEDERAL FALSE CLAIMS ACT (FFCA)?

A. History: Passed in Response to contractors cheating the army during the Civil War.

B. Purpose: It is currently used to recuperate money fraudulently taken from the government via the use of claims for services/products that are fraudulent or knowingly false. It is unique in that both a private citizen with knowledge of fraud (known as a whistleblower or qui tam plaintiff) and/or the government can bring a lawsuit under the statute.

C. The FCA was significantly strengthened in 1986 and is often used to sue companies that overcharge the Medicaid/Medicare/and other government funded healthcare programs. Often the allegations are that companies encourage Doctors to use their products in a way they weren't intended, which causes increased billing to the Medicaid program.

II. HOW DOES IT WORK?

A. The FCA encourages private citizens with knowledge of fraudulent activity to bring lawsuits on behalf of the Federal government. These people are called whistleblowers, relators, or qui tam plaintiffs. They are almost always insiders that have information not accessible to the government. They provide valuable insight into fraudulent activity.

B. Relators must give all information to the government who has 60 days to investigate and decide whether to join in the lawsuit or not (this time can be extended).

C. Relator gets a certain percentage of the recovery, depending on whether the government intervenes or lets the Relator go it on his/her own.

III. HOW DOES MEDICAID WORK?

Medicaid was instituted in 1964, as was Medicare. Medicare is a wholly Federal program whereas Medicaid is a joint Federal/State program. Medicaid is generally designed to pay for health care on behalf of poor people. Each state designs and administers its own program subject to requirements of the Federal government (Centers for Medicare and Medicaid Services or CMS).

In addition to CMS, the State Medicaid programs and the State Medicaid Fraud Control Units are also monitored by United States Health and Human Services (HHS) and the Office of Inspector General (HHS-OIG).

IV. WHAT IS FMAP?

FMAP, or Federal medical assistance percentage, is the Federal share of the money paid on behalf of people on Medicaid. The percentage is different for each state, depending on the per capita income of people within the state. Currently the FMAP for MT is 66%/34% which means of every Medicaid dollar spent, 66% comes from the Federal government.

When money is recovered on behalf of a State for fraud to its Medicaid program, regardless of how the money is recovered—the FMAP portion must be repaid by the State to the Federal government.

V. THE MONTANA FALSE CLAIM ACT (MTFCA).

A. WHY WAS IT ENACTED?

Lawsuits were being filed on the Federal level alleging that large pharmaceutical companies were cheating the Medicaid system. Recoveries (Millions of dollars) were being recovered, but the States weren't really being represented, since many had no false claim acts. Sometimes the Federal government would include the states, but not always. As a result, several states enacted State FCAs (including MT).

B. HOW IS THE STATE FALSE CLAIM ACT USED?

Very similar to the FFCA, the State FCA is used to recover money taken from the government through the use of fraudulent or knowingly false claims. In most cases, it is used against pharmaceutical companies, health supply companies, durable medical

equipment companies, etc. for submitting false claims or overcharging the Medicaid program. Since many schemes involve many States, and other federal healthcare programs (such as Medicare) there is often one nationwide lawsuit filed on behalf of the State's and the federal government.

VI. IMPACT OF THE DEFICIT REDUCTION ACT:

In 2006, the US Congress passed the DRA of 2005. It created an incentive for States to pass their own FCAs to combat Medicaid fraud. Those states that pass a FCA that parallels the Federal FCA are entitled to keep an extra 10% of the recoveries from such lawsuits, which would have otherwise had to be paid back to the Federal government as part of the FMAP recovery requirement. Most States' (including MT) FCAs include whistleblower, or qui tam provisions.

For example: After deducting the whistleblower's share, $100,000 was recovered by a whistleblower on MT's behalf. Since MT's FMAP is 66%, $66,000 must be paid to the Federal government. With the DRA "bump" of 10%, the percentage becomes 56% or $56,000. By having a DRA compliant statute, MT gains $10,000.

VII. WHY DOES THE STATE FCA NEED TO COMPORT WITH THE FFCA?

One requirement of the DRA was that State FCAs had to be at least as effective in encouraging whistleblower lawsuits as the Federal False Claims Act. HHS-OIG was tasked with reviewing each State's FCA to determine whether it was at least as effective in encouraging whistleblower lawsuits as the Federal FCA. In 2011, OIG determined that MT's FCA was deficient in several areas. As such MT has not qualified for the 10% FMAP "bump." The current revisions are intended to correct that problem.

The letters from HHS-OIG outlining the deficiencies are attached hereto.

The proposed amendments to MT's FCA adopt language from the Iowa False Claims Act which was found to be compliant with the FFCA. It also adopts language straight from the Federal FCA itself. The initial draft of this bill has been submitted to HHS-OIG for an informal review. We have not yet received their opinion.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201

DEC 29 2011

Mr. Joshua J. Happe
Director, Medicaid Fraud Control Unit
Iowa Department of Inspections & Appeals
321 East 12th Street
Des Moines, IA 50319-0083

Dear Mr. Happe:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) received your request to review the amended Iowa False Claims Act, Iowa Code §§ 685.1 through 685.7, under the requirements of section 1909 of the Social Security Act (the Act). Section 1909 of the Act provides a financial incentive for a State to enact a law that establishes liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. For a State to qualify for this incentive, the State law must meet certain requirements enumerated under section 1909(b) of the Act, as determined by the Inspector General of HHS in consultation with the U.S. Department of Justice (DOJ). We have determined, after consulting with DOJ, that the amended Iowa False Claims Act meets the requirements of section 1909 of the Act.

Any amendment to the Iowa False Claims Act could affect OIG's determination that it meets the requirements of section 1909 of the Act. Therefore, please notify OIG of any amendment to the Iowa False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me or have your staff contact Katie Arnholt at 202-205-3203 or Tamara Forys at 202-205-9426.

Sincerely,

/Daniel R. Levinson/

Daniel R. Levinson
Inspector General

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

March 21, 2011

The Honorable Steve Bullock
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Dear Mr. Attorney General:

The Office of Inspector General (OIG) of the U.S. Department of Health & Human Services (HHS) has received your request to review the Montana False Claims Act, Mont. Code Ann. §§ 17-8-401 through 17-8-413, under the requirements of section 1909 of the Social Security Act (the Act). Section 1909 of the Act provides a financial incentive for States to enact laws that establish liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. For a State to qualify for this incentive, the State law must meet certain requirements enumerated under section 1909(b) of the Act, as determined by the Inspector General of HHS in consultation with the U.S. Department of Justice (DOJ). After reviewing the law and consulting with DOJ, we have determined that the Montana False Claims Act does not meet the requirements of section 1909(b) of the Act.

On May 20, 2009, the Fraud Enforcement and Recovery Act of 2009 (FERA) made numerous amendments to the Federal False Claims Act, 31 U.S.C. §§ 3729-33. On March 23, 2010, the Patient Protection and Affordable Care Act (ACA) amended the Federal False Claims Act. Also, on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) further amended the Federal False Claims Act. These three acts, among other things, amended bases for liability in the Federal False Claims Act and expanded certain rights of *qui tam* relators.

Section 1909(b)(1) of the Act requires the State law to establish liability for false or fraudulent claims described in the Federal False Claims Act with respect to any expenditure described in section 1903(a) of the Act. The Federal False Claims Act, as amended by the FERA, establishes liability for, among other things:

- knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval (removing the requirement that the claim be presented to an officer or employee of the Government);

- knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;

- conspiring to commit a violation of the Federal False Claims Act; and

- knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the Government.

See 31 U.S.C. § 3729(a). Relevant to the above-described bases for liability, the Federal False Claims Act, as amended by the FERA, includes an expanded definition of the term "claim" and defines the terms "obligation" and "material." See 31 U.S.C. § 3729(b). In contrast, the Montana False Claims Act does not establish liability for the same breadth of conduct as the Federal False Claims Act, as amended.

Section 1909(b)(2) of the Act requires the State law to contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false and fraudulent claims as those described in sections 3730 through 3732 of the Federal False Claims Act. The Federal False Claims Act, as amended by the FERA and the Dodd-Frank Act, provides certain relief, including two times back pay, to any employee, contractor, or agent who is retaliated against because of lawful acts done in furtherance of a Federal False Claims Act action or efforts to stop violations of the Federal False Claims Act. See 31 U.S.C. § 3730(h). The Montana False Claims Act does not provide these persons with as much protection from retaliatory action. Therefore, the Montana False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act, as amended by the FERA, provides that for statute of limitations purposes, any Government complaint in intervention, whether filed separately or as an amendment to the relator's complaint, shall relate back to the filing date of the relator's complaint, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the relator's complaint. See 31 U.S.C. § 3731(c). In contrast, the Montana False Claims Act does not contain a similar provision. Therefore, the Montana False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act, as amended by the ACA, provides that the court shall dismiss an action or claim under the Federal False Claims Act, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed: (1) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (2) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (3) by the news media, unless the action is brought by the Attorney General or a person who is an original source of the information. See 31 U.S.C. § 3730(e)(4)(A). In contrast, the Montana False Claims Act requires a court to dismiss a broader category of cases based on a public disclosure and does not give Montana the

opportunity to oppose the dismissal. Therefore, the Montana False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

Further, the Federal False Claims Act, as amended by the ACA, defines "original source" as an individual who either: (1) prior to a public disclosure, voluntarily disclosed to the Government the information on which the allegations or transactions in a claim are based or (2) has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action. See 31 U.S.C. § 3730(e)(4)(B). In contrast, the Montana False Claims Act has a more restrictive definition of "original source." Therefore, the Montana False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that the court may reduce the relator's share if it finds that the relator "planned and initiated" the violation upon which the action was brought. See 31 U.S.C. § 3730(d)(3). In contrast, the Montana False Claims Act provides that the court may reduce or eliminate the relator's share if it finds that the relator "planned, initiated, or knowingly participated in" the violation. See Mont. Code Ann. § 17-8-410(5). Therefore, the Montana False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that if the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses. See 31 U.S.C. § 3170(d)(4). In contrast, the Montana False Claims Act provides that any award to the defendant of attorneys' fees and costs "must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs." See Mont. Code Ann. § 17-8-411. Therefore, the Montana False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Montana False Claims Act provides that no *qui tam* action may be filed based upon information discovered by a present or former employee of a Montana governmental entity during the course of his or her employment unless the employee first, in good faith, exhausted internal procedures for reporting and seeking recovery of the falsely claimed sums and the governmental entity failed to act within a reasonable period of time. See Mont. Code Ann. § 17-8-403(5)(d). The Federal False Claims Act contains no such limitation. Therefore, the Montana False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

Section 1909(b)(4) of the Act requires the State law to contain a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of the Federal False Claims Act. As amended by the FERA, the Federal False Claims Act now expressly provides that its civil penalty shall be adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990. See 31 U.S.C. § 3729(a). Pursuant to the Federal Civil Penalties Inflation Adjustment Act, a civil

penalty under the Federal False Claims Act is not less than $5,500 and not more than $11,000. In contrast, the Montana False Claims Act provides for a penalty of not less than $5,000 and not more than $10,000. See Mont. Code Ann. § 17-8-403(2)(a).

If the Montana False Claims Act is amended to address the issues noted above, please notify OIG for further consideration of the Montana False Claims Act. If you have any questions regarding this review, please contact me or have your staff contact Katie Arnholt, Senior Counsel, at 202-205-3203 or Tony Maida, Deputy Chief, Administrative and Civil Remedies Branch, at 202-205-9323.

Sincerely,

/Daniel R. Levinson/

Daniel R. Levinson
Inspector General

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

AUG 3 1 2011

The Honorable Steve Bullock
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Dear Mr. Attorney General:

This letter supplements the March 21, 2011, letter from the Office of Inspector General (OIG) of the U.S. Department of Health & Human Services (HHS) regarding OIG's review of the Montana False Claims Act, Mont. Code Ann. §§ 17-8-401 through 17-8-413, under the requirements of section 1909 of the Social Security Act (the Act). Section 1909 of the Act provides a financial incentive for States to enact laws that establish liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. For a State to qualify for this incentive, the State law must meet certain requirements enumerated under section 1909(b) of the Act, as determined by the Inspector General of HHS in consultation with the U.S. Department of Justice (DOJ). As explained in the March 21, 2011, letter, we have determined, after consulting with DOJ, that the Montana False Claims Act does not meet the requirements of section 1909 of the Act.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Federal False Claims Act by, among other things, establishing a 3-year statute of limitations for retaliation actions. See 31 U.S.C. § 3730(h)(3). The Montana False Claims Act does not provide at least a 3-year statute of limitations for retaliation actions. Therefore, the Montana False Claims Act not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

If the Montana False Claims Act is amended to address the issues identified in this letter and the March 21, 2011, letter, please notify OIG for further consideration of the Montana False Claims Act. If you have any questions, please contact me or have your staff contact Katie Arnholt, Senior Counsel, at 202-205-3203 or Susan Gillin, Deputy Chief, Administrative and Civil Remedies Branch, at 202-205-9426.

Sincerely,

/Daniel R. Levinson/

Daniel R. Levinson
Inspector General

Global Case Return (State Share)	Net Rec'd	Total
12/31/2009	$498,381.52	
3/31/2010	$619,568.74	
6/30/2010	$62,162.24	
9/30/2010	$105,529.50	$1,285,642.00
12/31/2010	$502,288.30	
3/31/2011	$176,877.97	
6/30/2011	$14,703.78	
9/30/2011	$152,995.86	$846,865.91
12/31/2011	$6,918.56	
3/31/2012	$5.53	
6/30/2012	$358,951.61	
9/30/2012	$954,387.16	$1,320,262.86

Montana State Legislature

2013 Session

Additional Documents include:

***Business Report**
***Roll Call-attendance**
***Standing Committee Reports,**
***Table Bills, Fiscal reports etc.**
***Roll Call Votes**
***Witness Statements**
***Informational items**
***Visitor Registrations**
***Any other Documents;**
~Petitions if any?
~Any and all material handed in after the meeting end.

The original is on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives
225 N. Roberts
Helena MT 59620-1201
2013 Legislative Scanner Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
63rd LEGISLATURE - REGULAR SESSION

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Wednesday, February 6, 2013 **Time:** 9:00 A.M.
Place: Capitol **Room:** 172

BILLS and RESOLUTIONS HEARD:

HB 345 - Revise false claims act - Rep. Cary Smith

EXECUTIVE ACTION TAKEN:

HB 87 - DO PASS AS AMENDED
HB 264 - DO PASS
HB 280 - DO PASS AS AMENDED
HB 321 - DO PASS
HB 333 - DO PASS AS AMENDED
HB 347 - DO PASS

Comments: HB 280 awaiting the arrival of fiscal note in Committee. Bill will remain in Committee until further notice.

Tom Berry

REP. Tom Berry, Chair

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS & LABOR COMMITTEE

DATE: 2/6/13

NAME	PRESENT	ABSENT/EXCUSED
REP. TOM BERRY, CHAIR	✓	
REP. DAN SALOMON, VICE CHAIR	✓	
REP. CARLIE BOLAND, VICE CHAIR	✓	
REP. CHRISTY CLARK	✓	
REP. AMANDA CURTIS	✓	
REP. STEVE FITZPATRICK	✓	
REP. EDWARD GREEF	✓	
REP. ROGER HAGAN	✓	
REP. CHUCK HUNTER	✓	
REP. MIKE LANG	✓	
REP. JONATHAN MCNIVEN	✓	
REP. DAVID MOORE	✓	
REP. REILLY NEIL	✓	
REP. PATRICIA PEPPERS		✓
REP. GORDON PIERSON, JR	✓	
REP. SCOTT REICHNER	✓	
REP. CARY SMITH	✓	
REP. CAROLYN SQUIRES		✓
REP. TOM STEENBERG	✓	
REP. JEFFERY WELBORN	✓	

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 87** (first reading copy -- white) **do pass as amended**.

Signed: Tom Berry
Representative Tom Berry, Chair

And, that such amendments read:

1. Page 1, line 13.
Strike: ", including" through "18042,"

2. Page 1, line 17.
Strike: "5"
Insert: "4"

3. Page 2, line 10.
Following: "33"
Strike: ","
Insert: "and"

4. Page 2, line 11.
Strike: ", and federal law"

5. Page 2, line 17.
Strike: "5"
Insert: "4"

6. Page 2, line 20 through line 21.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

7. Page 2, line 27 through line 28.
Strike: subsection (i) in its entirety

Committee Vote:
Yes 19, No 1
Fiscal Note Required __

HB0087001SC.hjk

DC 2-6-13
11:00

Renumber: subsequent subsections

8. Page 3, line 8.
Following: "state"
Strike: "or federal"

9. Page 4, line 2.
Following: "33"
Insert: ", except that the administrative rules may not include by reference any provisions of Public Law 111-148 and Public Law 111-152 or any regulations promulgated under those laws"

10. Page 4, line 9.
Strike: "(2)(d)"
Insert: "(1)(d)"

11. Page 4, line 10.
Strike: "(5)"
Insert: "(4)"

12. Page 4, line 11 through line 12.
Strike: "and" on line 11 through "seq." on line 12

13. Page 4, line 12 through line 13.
Strike: "file" on line 12 through "services" on line 13
Insert: "publish the finding on the commissioner's website"

14. Page 4, line 22 through line 27.
Strike: section 4 in its entirety
Renumber: subsequent sections

15. Page 4, line 30.
Strike: "5]."
Insert: "4] , except that the administrative rules may not include by reference any provisions of Public Law 111-148 and Public Law 111-152 or any regulations promulgated under those laws."

16. Page 5, line 28.
Strike: "5"
Insert: "4"

17. Page 6, line 2.
Strike: "5"
Insert: "4"

18. Page 6, line 4.
Strike: "5"

Insert: "4"

19. Page 6, line 10 through line 12.
Strike: section 9 in its entirety
Renumber: subsequent sections

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 264** (first reading copy -- white) **do pass**.

Signed: Tom Berry
Representative ~~Tom~~ Berry, Chair

- END -

Committee Vote:
Yes 18, No 2
Fiscal Note Required __

HB0264001SC.hjk

DC 2-6-13
11:00

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 280** (first reading copy -- white) **do pass as amended**.

Signed: Tom Berry
Representative Tom Berry, Chair

And, that such amendments read:

1. Title, page 4.
Strike: "SICKNESS"
Insert: "DISABILITY"

2. Page 1, line 24.
Strike: "**sickness**"
Insert: "disability"

3. Page 1, line 27.
Strike: "sickness"
Insert: "disability"
Following: "health or"
Strike: "sickness"
Insert: "disability"

4. Page 1, line 29.
Following: "health or"
Strike: "sickness"
Insert: "disability"

5. Page 2, line 1.
Strike: "sickness"
Insert: "disability"

6. Page 2, line 6.
Following: "health or"

Committee Vote:
Yes 11, No 9
Fiscal Note Required __

HB0280001SC.hjk

DC 2-6-13
11:00

Strike: "sickness"
Insert: "disability"

7. Page 2, line 17.
Strike: "sickness"
Insert: "disability"

8. Page 2, line 27.
Following: "health or"
Strike: "sickness"
Insert: "disability"

9. Page 3, line 12.
Following: "health or"
Strike: "sickness"
Insert: "disability"

10. Page 3, line 15.
Following: "Health or"
Strike: "sickness"
Insert: "disability"

11. Page 4, line 9.
Following: "health or"
Strike: "sickness"
Insert: "disability"

12. Page 4, line 18.
Strike: "sickness"
Insert: "disability"

13. Page 4, line 25.
Following: "health or"
Strike: "sickness"
Insert: "disability"

14. Page 4, line 26.
Strike: "sickness"
Insert: "disability"

15. Page 7, line 27.
Strike: "sickness"
Insert: "disability"

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 321** (first reading copy -- white) **do pass**.

Signed: Tom Berry
Representative Tom Berry, Chair

- END -

Committee Vote:
Yes 12, No 8
Fiscal Note Required __

HB0321001SC.hjk

DC 2-6-13
11:00

HOUSE STANDING COMMITTEE REPORT

February 6, 2013

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 333** (first reading copy -- white) **do pass as amended**.

Signed: Tom Berry
Representative Tom Berry, Chair

And, that such amendments read:

1. Page 1, line 29.
Following: "coffee or"
Insert: "hot"

- END -

Committee Vote:
Yes 20, No 0
Fiscal Note Required __

HB0333001SC.hjk

2-6-13 DC
11:00

HOUSE STANDING COMMITTEE REPORT

February 6, 2013

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 347** (first reading copy -- white) **do pass**.

Signed: Tom Berry
Representative ~~Tom~~ Berry, Chair

- END -

Committee Vote:
Yes 20, No 0
Fiscal Note Required ___

HB0347001SC.hjk

DC 2-6-13
11:00

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS & LABOR COMMITTEE

DATE:_____ BILL NO 87 MOTION NO._____
MOTION:_____

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. DAN SALOMON, VICE CHAIR	✓		
REP. CARLIE BOLAND, VICE CHAIR	✓		
REP. CHRISTY CLARK	✓		
REP. AMANDA CURTIS	✓		
REP.STEVE FITZPATRICK	✓		
REP. EDWARD GREEF	✓		
REP. ROGER HAGAN	✓		
REP. CHUCK HUNTER	✓		
REP. MIKE LANG	✓		
REP. JONATHAN MCNIVEN	✓		✓
REP. DAVID MOORE	✓		
REP. REILLY NEILL	✓		
REP. PATRICIA PEPPERS	✓		✓
REP. GORDON PIERSON, JR	✓		
REP. SCOTT REICHNER	✓		
REP. CARY SMITH		✓	
REP. CAROLYN SQUIRES	✓		✓
REP. TOM STEENBERG	✓		
REP. JEFFERY WELBORN	✓		
REP. TOM BERRY, CHAIR	✓		

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS & LABOR COMMITTEE

DATE:_____ BILL NO 280 MOTION NO._____
MOTION:_____

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. DAN SALOMON, VICE CHAIR	✓		
REP. CARLIE BOLAND, VICE CHAIR		✓	
REP. CHRISTY CLARK	✓		
REP. AMANDA CURTIS		✓	
REP.STEVE FITZPATRICK	✓		
REP. EDWARD GREEF	✓		
REP. ROGER HAGAN	✓		
REP. CHUCK HUNTER		✓	
REP. MIKE LANG	✓		
REP. JONATHAN MCNIVEN	✓		✓
REP. DAVID MOORE	✓		
REP. REILLY NEILL		✓	
REP. PATRICIA PEPPERS		✓	✓
REP. GORDON PIERSON, JR		✓	
REP. SCOTT REICHNER	✓		
REP. CARY SMITH	✓		
REP. CAROLYN SQUIRES		✓	✓
REP. TOM STEENBERG		✓	
REP. JEFFERY WELBORN		✓	
REP. TOM BERRY, CHAIR	✓		

11-9

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS & LABOR COMMITTEE

DATE:_____ BILL NO 321 MOTION NO._____
MOTION:_____

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. DAN SALOMON, VICE CHAIR	✓		
REP. CARLIE BOLAND, VICE CHAIR		✓	
REP. CHRISTY CLARK	✓		
REP. AMANDA CURTIS		✓	
REP.STEVE FITZPATRICK	✓		
REP. EDWARD GREEF	✓		
REP. ROGER HAGAN	✓		
REP. CHUCK HUNTER		✓	
REP. MIKE LANG	✓		
REP. JONATHAN MCNIVEN	✓		✓
REP. DAVID MOORE	✓		
REP. REILLY NEILL		✓	
REP. PATRICIA PEPPERS		✓	✓
REP. GORDON PIERSON, JR		✓	
REP. SCOTT REICHNER	✓		
REP. CARY SMITH	✓		
REP. CAROLYN SQUIRES		✓	✓
REP. TOM STEENBERG		✓	
REP. JEFFERY WELBORN	✓		
REP. TOM BERRY, CHAIR	✓		

12-8

AUTHORIZED
COMMITTEE PROXY

I request to be excused from the House Business & Labor

Committee because of other commitments. I desire to leave my proxy vote with:

Rep. Salomon

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 87	X	
Admd	X	
HB 264		X
HB 280	X	
Admd	X	
~~HB 283 - no vote passed~~		
HB 321	X	
HB 333	X	
Admd	X	
HB 347	X	

BILL/AMENDMENT	AYE	NO

Rep. Jonathan D. McNiven (Signature) Date Feb. 6, 2013

AUTHORIZED
COMMITTEE PROXY

I request to be excused from the B & L

Committee because of other commitments. I desire to leave my proxy vote with:

V-Chair Ryan

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 87 AS AMEND	✓	
HB 264	✓	
HB 280 AS AMEND		✓
HB 321		✓
HB 333 AS AMEND	✓	
HB 347	✓	
HB 87 amendmt.	✓	
HB 280 amendmt.	✓	
HB 333 amendmt	✓	

BILL/AMENDMENT	AYE	NO

Rep. Carolyn Gorman (Signature)

Date 2/6/13

AUTHORIZED
COMMITTEE PROXY

I request to be excused from the B & L

Committee because of other commitments. I desire to leave my proxy vote with:

V-Chair Roberts

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 87 AS AMEND	✓	
HB 264	✓	
HB 280 AS AMEND		✓
HB 321		✓
HB 333 AS AMEND	✓	
HB 347	✓	
HB 87 amendmt.	✓	
HB 280 amendmt.	✓	
HB 333 amendmt.	✓	

BILL/AMENDMENT	AYE	NO

Rep. Pat Peppers (Signature)

Pcppers

Date 2/6/13

S:\2013 House Session\Chief Clerks Office\Forms\ProxyCommitteeAuthorized2013.wpd

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Wednesday, February 6, 2013
HB 345 - Revise false claims act
Sponsor: **Rep. Cary Smith**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Kenneth Varns	Attorney General's Ofc.	✓		✓
Al Smith	MTLA	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
63rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Tom Berry, on February 13, 2013 at 9:00 A.M., in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Tom Berry, Chair (R)
Rep. Carlie Boland, Vice Chair (D)
Rep. Daniel R. Salomon, Vice Chair (R)
Rep. Christy Clark (R)
Rep. Amanda Curtis (D)
Rep. Steve Fitzpatrick (R)
Rep. Edward Greef (R)
Rep. Roger A. Hagan (R)
Rep. Chuck Hunter (D)
Rep. Mike Lang (R)
Rep. Jonathan McNiven (R)
Rep. David (Doc) Moore (R)
Rep. Reilly Neill (D)
Rep. Rae Peppers (D)
Rep. Gordon Pierson Jr (D)
Rep. Scott Reichner (R)
Rep. Cary Smith (R)
Rep. Tom Steenberg (D)
Rep. Jeffrey W. Welborn (R)

Members Excused: Rep. Carolyn Squires (D)

Members Absent: None

Staff Present: Ellen Bush, Committee Secretary
Bart Campbell, Legislative Services Division (LSD)

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 297, 2/7/2013; HB 402, 2/7/2013; HB 424, 2/7/2013; HB 425, 2/7/2013
Executive Action:	HB 48, HB 284, HB 345, HB 362, HB 400

00:06:59 Chair Berry

HEARING ON HB 402

Opening Statement by Sponsor:
00:07:51 Rep. Chuck Hunter (D), HD 79, opened the hearing on HB 402, License and regulate wineries selling and shipping wine directly to MT consumers.
EXHIBIT(buh32a01)

Proponents' Testimony:
00:14:54 Mona Jamison, Attorney, Wine Institute
EXHIBIT(buh32a02)
00:28:08 Bill Warden, Self
00:29:20 Chase Hibbard, Self, Helena
00:34:39 Rachel Conn, Self, Helena

Opponents' Testimony:
00:37:03 Kristi Blazer, Montana Beer and Wine Distributors Association
EXHIBIT(buh32a03)
00:52:06 Carter Mollgaard, M & C Beverage
EXHIBIT(buh32a04)
00:53:21 Dan Haney, Summit Beverage
00:55:55 Kurt Winegardner, Owner, Winegardner's Wines

Informational Testimony:
01:02:14 Shauna Helfert, Administrator, Liquor Control Division, Department of Revenue (DOR)

Questions from Committee Members and Responses:
01:02:40 Rep. Boland
01:02:59 Ms. Helfert, DOR
01:03:42 Rep. Boland
01:04:10 Ms. Jamison, Wine Institute
01:04:33 Rep. Boland
01:04:53 Ms. Jamison, Wine Institute

Closing by Sponsor:
01:06:00 Rep. Hunter

HEARING ON HB 297

Opening Statement by Sponsor:
01:07:16 Rep. David Howard (R), HD 60, opened the hearing on HB 297, Provide that employment of an unauthorized alien is unlawful.

Proponents' Testimony:
01:11:40 Brad Griffin, Montana Restaurant Association and Montana Retail Association
01:15:57 Riley Johnson, National Federation of Independent Business (NFIB)
01:17:23 Roger Nummerdor, Self, Helena

01:19:05 Paul Nackman, Self, Bozeman
EXHIBIT(buh32a05)
EXHIBIT(buh32a06)
01:23:42 Cary Hegreberg, Executive Director, Montana Contractors Association (MCA)
01:26:36 Glenn Oppel, Montana Chamber of Commerce

Opponents' Testimony:
01:27:33 Niki Zupanic, American Civil Liberties Union (ACLU)
01:31:45 Bruce Spencer, Montana Automobile Dealers Association (MADA)
01:32:58 Jamie Greer, Montana Human Rights Network (MHRN)
EXHIBIT(buh32a07)

Informational Testimony: None

Questions from Committee Members and Responses:
01:34:54 Chair Berry
01:35:05 Rep. Howard
01:35:24 Rep. Boland
01:36:18 Rep. Howard
01:36:23 Mr. Campbell, LSD
01:37:05 Rep. Curtis
01:37:53 Mr. Hegreberg, MCA
01:38:06 Rep. Peppers
01:38:51 Rep. Howard
01:39:10 Rep. Peppers
01:39:13 Rep. Howard
01:39:43 Rep. Steenberg
01:40:12 Ms. Zupanik, ACLU

Closing by Sponsor:
01:41:32 Rep. Howard

HEARING ON HB 424

Opening Statement by Sponsor:
01:44:06 Rep. JP Pomnichowski (D), HD 66, opened the hearing on HB 424, Allow tasting event by limited sellers of wine consumed off-premises.

Proponents' Testimony:
01:48:51 Tim Christiansen, Owner, Vino Per Tutti, Bozeman
01:52:53 Doug Badenoch, Owner, Wine Gallery, Bozeman

Opponents' Testimony:
01:57:33 John Iverson, Montana Tavern Association
02:01:52 Neil Peterson, Gaming Industry Association
02:04:08 Brad Griffin, Montana Restaurant Association

Informational Testimony:
02:04:21 Shauna Helfert, DOR

Questions from Committee Members and Responses:
02:04:37 Rep. Boland
02:05:07 Rep. Pomnichowski
02:05:55 Rep. Boland
02:06:15 Ms. Helfert, DOR
02:06:59 Rep. Lang
02:07:07 Mr. Christiansen
02:08:02 Rep. Lang
02:08:05 Mr. Christiansen
02:08:13 Rep. Welborn
02:08:52 Mr. Christiansen
02:09:46 Rep. Hagan
02:10:37 Ms. Helfert, DOR

Closing by Sponsor:
02:11:32 Rep. Pomnichowski

HEARING ON HB 425

Opening Statement by Sponsor:
02:13:38 Rep. JP Pomnichowski (D), HD 66, opened the hearing on HB 425, Revise laws related to the sale of fortified wine.

Proponents' Testimony:
02:20:53 Mr. Badenoch, Wine Gallery
02:22:57 Mr. Christensen, Vino Per Tutti

Opponents' Testimony:
02:23:46 John Iverson, MTA
02:25:28 Mr. Peterson, Montana Gaming Industry

Informational Testimony:
02:26:30 Ms. Helfert, DOR

Questions from Committee Members and Responses:
02:26:51 Rep. Boland
02:27:13 Rep. Pomnichowski
02:27:44 Mr. Campbell, LSD
02:28:07 Chair Berry
02:28:18 Rep. Pomnichowski

Closing by Sponsor:
02:28:30 Rep. Pomnichowski

02:29:13 Chair Berry

02:29: 20 Recessed
02:50:28 Reconvened. Rep. Reichner and Rep. McNiven did not return.

EXECUTIVE ACTION ON HB 345

02:50:45 **Motion:** Rep. Salomon moved that **HB 345 DO PASS**.

Discussion:
02:51:00 Rep. Smith

02:51:28 **Motion:** Rep. Salomon moved that **HB 345 BE AMENDED**.
EXHIBIT(buh32a08)

Discussion:
02:52:00 Chair Berry
02:52:06 Rep. Smith
02:52:16 Kenneth Varnes, Assistant Attorney General, Department of Justice (DOJ)

02:55:53 **Vote:** Motion carried unanimously by voice vote. Rep. Hunter, Rep. McNiven and Rep. Squires voted by proxy.

02:56:00 **Motion:** Rep. Salomon moved that **HB 345 DO PASS AS AMENDED**.

Discussion:
02:56:08 Rep. Smith

02:56:26 **Vote:** Motion carried unanimously by voice vote. Rep. Hunter, Rep. McNiven and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 281

02:56:49 **Motion:** Rep. Salomon moved that **HB 281 DO PASS**.

Discussion:
02:56:56 Rep. Smith

02:57:20 **Motion:** Rep. Salomon moved that **HB 281 BE AMENDED**.
EXHIBIT(buh32a09)

Discussion:
02:57:32 Rep. Smith

02:57:54 **Vote:** Motion carried unanimously by voice vote. Rep. Hunter, Rep. McNiven and Rep. Squires voted by proxy.

02:58:01 **Motion:** Rep. Salomon moved that **HB 281 DO PASS AS AMENDED**.

Discussion:
02:58:06 Rep. Smith
02:58:17 Rep. Boland
02:58:52 Rep. Smith

03:00:27 **Vote:** Motion carried 13-7 by roll call vote with Rep. Boland, Rep. Curtis, Rep. Hunter, Rep. Neill, Rep. Peppers, Rep. Pierson and Rep. Squires voting no. Rep. Hunter, Rep. McNiven and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 284

03:00:33 **Motion:** Rep. Salomon moved that **HB 284 DO PASS**.

Discussion:
03:00:44 Mr. Campbell, LSD

03:01:05 **Motion:** Rep. Salomon moved that **HB 284 BE AMENDED**.
EXHIBIT(buh32a10)

Discussion:
03:01:16 Mr. Campbell, LSD
03:02:11 Rep. "Doc" Moore

03:03:00 **Vote:** Motion carried unanimously by voice vote.

03:03:08 **Motion/Vote:** Rep. Salomon moved that **HB 284 DO PASS AS AMENDED**. Motion carried 17-3 by roll call vote with Rep. McNiven, Rep. Reichner and Rep. Salomon voting no. Rep. Hunter, Rep. McNiven and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 362

03:04:24 **Motion:** Rep. Salomon moved that **HB 362 DO PASS**.

03:04:45 **Motion:** Rep. Salomon moved that **HB 362 BE AMENDED**.
EXHIBIT(buh32a11)

Discussion:
03:05:00 Mr. Campbell, LSD

03:05:57 **Vote:** Motion carried unanimously by voice vote. Rep. McNiven, Rep. Reichner and Rep. Squires voted by proxy.

03:06:02 **Motion:** Rep. Salomon moved that **HB 262 DO PASS AS AMENDED**.

Discussion:
03:06:25 Ms. Grmoljez, Montana Captive Insurance Association
03:09:00 Chair Berry

03:09:16 **Vote:** Motion carried unanimously by voice vote. Rep. McNiven, Rep. Reichner and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 48

03:09:50 **Motion/Vote:** Rep. Salomon moved that **HB 48 DO PASS**. Motion carried unanimously by voice vote. Rep. McNiven, Rep. Reichner and Rep. Squires voted by proxy.

EXECUTIVE ACTION ON HB 400

03:10:14 **Motion:** Rep. Salomon moved that **HB 400 DO PASS**.

03:10:25 **Substitute Motion/Vote:** Rep. Reichner made a substitute motion that **HB 400 BE TABLED**. Substitute Motion carried unanimously by voice vote. Rep. Hunter, Rep. McNiven and Rep. Squires voted by proxy.

03:10:58 Chair Berry

ADJOURNMENT

Adjournment: 03:11:23

Ellen Bush, Secretary

eb

Additional Documents:

EXHIBIT(buh32aad.pdf)

EXHIBIT 8
DATE 2/13/13
HB 345

Amendments to House Bill No. 345
1st Reading Copy

Requested by Representative Cary Smith

For the House Business and Labor Committee

Prepared by Julie Johnson
February 13, 2013 (7:08am)

1. Page 2, line 18.
Following: line 17
Insert: "(8) "State" means the state of Montana."

2. Page 3, lines 9 and 10.
Strike: "to conceal" on line 9 through "contractors" on line 10
Insert: "material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity"

3. Page 4, line 5.
Strike: "a"

4. Page 4, line 6.
Following: "(i)"
Insert: "a"

5. Page 4, line 8.
Following: "(ii)"
Insert: "a"

6. Page 4, line 9.
Following: "(iii)"
Insert: "the"
Strike: "report"

7. Page 4, line 15 through line 18.
Strike: ":" on line 15 through "entity." on line 18
Insert: "brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's

duties to the state."

8. Page 7, line 10.
Strike: "If the" through ", a"
Insert: "A"

9. Page 7, line 14.
Following: "."
Insert: "If the governmental entity does not intervene, it is not responsible for any of the defendant's fees and costs."

10. Page 7, line 17.
Strike: "Prohibition on employers -- employee
Insert: "Retaliatory actions prohibited --"

11. Page 7, line 18.
Strike: "officer, agency,"
Insert: "agent,"

12. Page 7, line 22.
Strike: "officer, agency,"
Insert: "agent,"

13. Page 7, line 24.
Strike: "officer, agency,"
Insert: "agent,"

14. Page 7, line 26 through page 8, line 5.
Strike: "(a) A governmental" on page 7, line 26 through "occurred." on page 8, line 5
Insert: "An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or

more violations of this part.

(4) Relief under subsection (3) includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. A civil action may be brought in the appropriate district court of the state for the relief provided in this subsection.

(5) A civil action under this section may not be brought more than 3 years after the date on which the retaliation occurred."

- END -

Montana State Legislature

2013 Session

Additional Documents include:

***Business Report**
***Roll Call - attendance**
***Standing Committee Reports,**
***Table Bills, Fiscal reports etc.**
***Roll Call Votes**
***Witness Statements**
***Informational items**
***Visitor Registrations**
***Any other Documents;**
~Petitions if any?
~Any and all material handed in after the meeting end.

The original is on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives
225 N. Roberts
Helena MT 59620-1201
2013 Legislative Scanner Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
63rd LEGISLATURE - REGULAR SESSION

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Wednesday, February 13, 2013
Place: Capitol

Time: 9:00 A.M.
Room: 172

BILLS and RESOLUTIONS HEARD:

HB 297 - Provide that employment of an unauthorized alien is unlawful - Rep. David Howard
HB 402 - License and regulate wineries selling and shipping wine directly to MT consumers - Rep. Chuck Hunter
HB 424 - Allow tasting event by limited sellers of wine consumed off-premises - Rep. JP Pomnichowski
HB 425 - Revise laws related to the sale of fortified wine - Rep. JP Pomnichowski

EXECUTIVE ACTION TAKEN:

HB 48 - DO PASS
HB 400 - TABLED
HB 345 - DO PASS AS AMENDED
HB 281 - DO PASS AS AMENDED
HB 284 - DO PASS AS AMENDED
HB 363 - DO PASS AS AMENDED

Comments: None

Tom Berry

REP. Tom Berry, Chair

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS & LABOR COMMITTEE

DATE: 2/13/13

NAME	PRESENT	ABSENT/EXCUSED
REP. TOM BERRY, CHAIR	✓	
REP. DAN SALOMON, VICE CHAIR	✓	
REP. CARLIE BOLAND, VICE CHAIR	✓	
REP. CHRISTY CLARK	✓	
REP. AMANDA CURTIS	✓	
REP. STEVE FITZPATRICK	✓	
REP. EDWARD GREEF	✓	
REP. ROGER HAGAN	✓	
REP. CHUCK HUNTER	✓	
REP. MIKE LANG	✓	
REP. JONATHAN MCNIVEN	✓	
REP. DAVID MOORE	✓	
REP. REILLY NEIL	✓	
REP. PATRICIA PEPPERS	✓	
REP. GORDON PIERSON, JR	✓	
REP. SCOTT REICHNER	✓	
REP. CARY SMITH	✓	
REP. CAROLYN SQUIRES		✓
REP. TOM STEENBERG	✓	
REP. JEFFERY WELBORN	✓	

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 345** (first reading copy -- white) **do pass as amended**.

Signed: Tom Berry
Representative Tom Berry, Chair

And, that such amendments read:

1. Page 2, line 18.
Following: line 17
Insert: "(8) "State" means the state of Montana."

2. Page 3, lines 9 and 10.
Strike: "to conceal" on line 9 through "contractors" on line 10
Insert: "material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity"

3. Page 4, line 5.
Strike: "a"

4. Page 4, line 6.
Following: "(i)"
Insert: "a"

5. Page 4, line 8.
Following: "(ii)"
Insert: "a"

Committee Vote:
Yes 20, No 0
Fiscal Note Required __

HB0345001SC.hjk

6. Page 4, line 9.
Following: "(iii)"
Insert: "the"
Strike: "report"

7. Page 4, line 15 through line 18.
Strike: ":" on line 15 through "entity." on line 18
Insert: "brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state."

8. Page 7, line 10.
Strike: "If the" through ", a"
Insert: "A"

9. Page 7, line 14.
Following: "."
Insert: "If the governmental entity does not intervene, it is not responsible for any of the defendant's fees and costs."

10. Page 7, line 17.
Strike: "Prohibition on employers -- employee
Insert: "Retaliatory actions prohibited --"

11. Page 7, line 18.
Strike: "officer, agency,"
Insert: "agent,"

12. Page 7, line 22.
Strike: "officer, agency,"
Insert: "agent,"

13. Page 7, line 24.
Strike: "officer, agency,"
Insert: "agent,"

14. Page 7, line 26 through page 8, line 5.

Strike: "(a) A governmental" on page 7, line 26 through "occurred." on page 8, line 5

Insert: "An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or more violations of this part.

(4) Relief under subsection (3) includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. A civil action may be brought in the appropriate district court of the state for the relief provided in this subsection.

(5) A civil action under this section may not be brought more than 3 years after the date on which the retaliation occurred."

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 281** (first reading copy -- white) **do pass as amended.**

Signed: Tom Berry
Representative Tom Berry, Chair

And, that such amendments read:

1. Page 2, line 6.
Following: "surgeon,"
Insert: "physician assistant,"
Following: "dentist,"
Insert: "dental hygienist,"

- END -

Committee Vote:
Yes 13, No 7
Fiscal Note Required __

HB0281001SC.hjk

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 284** (first reading copy -- white) **do pass as amended**.

Signed: Tom Berry
Representative Tom Berry, Chair

And, that such amendments read:

1. Page 2, line 15 through line 18.
Strike: line 15 through line 18
Insert: "(A) for agency liquor stores with a volume of sales up to $1.1 million:
(I) 2.25% during the period beginning July 1, 2013, and ending June 30, 2014;
(II) 3% beginning July 1, 2014;
(B) for agency liquor stores with a volume of sales greater than $1.1 million and up to $3.1 million:
(I) 1.375% during the period beginning July 1, 2013, and ending June 30, 2014;
(II) 1.875% beginning July 1, 2014;
(C) for agency liquor stores with a volume of sales greater than $3.1 million and up to $5.1 million:
(I) 1% during the period beginning July 1, 2013, and ending June 30, 2014;
(II) 1.125% beginning July 1, 2014;
(D) for agency liquor stores with a volume of sales greater than $5.1 million:
(I) 0.875% during the period beginning July 1, 2013, and ending June 30, 2014;
(II) 1% beginning July 1, 2014; or"

2. Page 2, line 19.
Strike: "(C)"
Insert: "(E)"

Committee Vote:
Yes 17, No 3
Fiscal Note Required __

HB0284001SC.hjk

3. Page 2, line 20.
Strike: "(4)(a)(ii)(A) or (4)(a)(ii)(B)"
Insert: "(4)(a)(ii)"

4. Page 2, line 23.
Strike: "subsections (4)(a)(ii)(A) or (4)(a)(ii)(B)"
Insert: "subsection (4)(a)(ii) of the relevant year"

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 362** (first reading copy -- white) **do pass as amended.**

Signed: Tom Berry
Representative Tom Berry, Chair

And, that such amendments read:

1. Title, line 8.
Following: "35-8-202,"
Insert: "35-8-205,"

2. Page 5, line 7.
Strike: "does not apply"
Insert: "applies"

3. Page 7, following line 16.
Insert: "Section 5. Section 35-8-205, MCA, is amended to read:

"35-8-205. Filing with secretary of state. (1) The articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and that all required filing fees have been paid, the secretary of state shall:

(a) endorse on the signed document the word "filed" and the date and time of accepting the document for filing;

(b) retain the signed document in the secretary of state's files; and

(c) send a certification letter to the person who filed the document or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the

Committee Vote:
Yes 20, No 0
Fiscal Note Required __

HB0362001SC.hjk

DC 2-13-13
12:30

secretary of state subsequently determines that the documents as delivered conform to the filing provisions of 35-8-201 through 35-8-211.

(3) All documents filed with the secretary of state must reflect the name of the limited liability company and all series of members within the limited liability company if the limited liability company has one or more series of members.""

Renumber: subsequent sections

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 48** (first reading copy -- white) **do pass**.

Signed: Tom Berry
Representative Tom Berry, Chair

- END -

Committee Vote:
Yes 20, No 0
Fiscal Note Required __

HB0048001SC.hjk

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE BUSINESS AND LABOR COMMITTEE

The **HOUSE BUSINESS AND LABOR COMMITTEE** TABLED
HB 400 - Revise laws related to personal information privacy - Rep. Daniel Zolnikov
, by motion, on **Wednesday, February 13, 2013**.

Glen Bush
(For the Committee)

DC
(For the Chief Clerk of the House)

1:06 / 2-13
(Time) (Date)

February 13, 2013 (12:57pm) Ellen Bush, Secretary Phone: 7353

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS & LABOR COMMITTEE

DATE: 2/13/13 BILL NO 281 MOTION NO.
MOTION: Do Pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. DAN SALOMON, VICE CHAIR	✓		
REP. CARLIE BOLAND, VICE CHAIR		✓	
REP. CHRISTY CLARK	✓		
REP. AMANDA CURTIS		✓	
REP.STEVE FITZPATRICK	✓		
REP. EDWARD GREEF	✓		
REP. ROGER HAGAN	✓		
REP. CHUCK HUNTER		✓	✓
REP. MIKE LANG	✓		
REP. JONATHAN MCNIVEN	✓		✓
REP. DAVID MOORE	✓		
REP. REILLY NEILL		✓	
REP. PATRICIA PEPPERS		✓	
REP. GORDON PIERSON, JR		✓	
REP. SCOTT REICHNER	✓		
REP. CARY SMITH	✓		
REP. CAROLYN SQUIRES		✓	
REP. TOM STEENBERG	✓		
REP. JEFFERY WELBORN	✓		
REP. TOM BERRY, CHAIR	✓		

13-7

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS & LABOR COMMITTEE

DATE: 2/13/13 BILL NO 284 MOTION NO._____
MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. DAN SALOMON, VICE CHAIR	✓		
REP. CARLIE BOLAND, VICE CHAIR	✓		
REP. CHRISTY CLARK	✓		
REP. AMANDA CURTIS	✓		
REP.STEVE FITZPATRICK	✓		
REP. EDWARD GREEF	✓		
REP. ROGER HAGAN	✓		
REP. CHUCK HUNTER	✓		✓
REP. MIKE LANG	✓		
REP. JONATHAN MCNIVEN		✓	✓
REP. DAVID MOORE	✓		
REP. REILLY NEILL	✓		
REP. PATRICIA PEPPERS	✓		
REP. GORDON PIERSON, JR	✓		
REP. SCOTT REICHNER		✓	
REP. CARY SMITH		✓	
REP. CAROLYN SQUIRES	✓		✓
REP. TOM STEENBERG	✓		
REP. JEFFERY WELBORN	✓		
REP. TOM BERRY, CHAIR	✓		

17-3

AUTHORIZED
COMMITTEE PROXY

I request to be excused from the House Business & Labor Committee because of other commitments. I desire to leave my proxy vote with:

Rep. Solomon

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
~~Rep~~ HB 345	X	
Admnd	X	
HB 281	X	
Admnd	X	
HB 284	~~X~~	X
admnd	X	
HB 362	X	
admnd	X	
HB 48	X	
HB 400		
table	X	

BILL/AMENDMENT	AYE	NO

Rep. Jonathan D Wells (Signature) Date 2-13-13

AUTHORIZED
COMMITTEE PROXY

I request to be excused from the B&C

Committee because of other commitments. I desire to leave my proxy vote with:

V-Chair Ryland

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 345 AS AMEND.	✓	
HB 281 AS AMEND		✓
HB 284 AS AMEND	✓	
~~HB 345~~		
HB 362 AS AMEND	✓	
HB 48	✓	
~~HB 400~~		
HB 345 amend.	✓	
HB 281 amend.	✓	
HB 284 amend.	✓	
HB 362 amend.	✓	

BILL/AMENDMENT	AYE	NO

Rep. Candace Squires
(Signature)

Date 2/13/13

S:\2013 House Session\Chief Clerks Office\Forms\ProxyCommitteeAuthorized2013.wpd

AUTHORIZED
COMMITTEE PROXY

I request to be excused from the Business & Labor

Committee because of other commitments. I desire to leave my proxy vote with:

V-Chair Balmer

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 345 AS AMEND	✓	
HB 281 AS AMEND		✓
HB 284 AS AMEND	✓	
HB 362 AS AMEND	✓	
HB 48	✓	
~~HB 400~~		
HB345 amendmt.	✓	
HB281 amendmt.	✓	
HB284 amendmt.	✓	
HB362 amdmt.	✓	

BILL/AMENDMENT	AYE	NO

Rep. Chuck Hunter
(Signature)

Date 2/13/13

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

~~Tuesday, February 12, 2013~~ Wed. Feb. 13, 2013

HB 297 - Provide that employment of an unauthorized alien is unlawful

Sponsor: **Rep. David Howard**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Roger Nummedor	Self	X		
Niki Zupanic	ACLU of MT		✓	
~~Brad Griffin~~	~~MT Retail & Restaurant~~	X		
Glenn Oppel	MT Chamber	X		
Riley Johnson	NFIB	X		
Shane Spencer	MHPA		-	
Paul Nachman	self	✓		
Cary Hegreberg	Contractors Asso.	✓		
Jamee Greer	MHRN		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

~~Tuesday, February 12, 2013~~ Wed. Feb. 13, 2013

HB 402 - License and regulate wineries selling and shipping wine directly to MT consumers

Sponsor: **Rep. Chuck Hunter**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Kristi Blazer	MT Beer & Wine Dist.		✓	
Carter Mallgaard	~~MT Beverage~~ MT Beer & Wine Dist		✓	
Dan Haney	~~Summit Beverage~~ MT Beer & Wine - Summit Bev		✓	
Mona Jamieson	WIWE Institute	✓		
Shauna Helfer +		✓		✓
Chase Hibbard	Self	✓		
Bill Warden	"	✓		
Rachel Conn	Self	✓		
KURT WINEGARDNER	WINEGARDNER WINES		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Wed. Feb. 13, 2013
~~Tuesday, February 12, 2013~~
HB 425 - Revise laws related to the sale of fortified wine
Sponsor: **Rep. JP Pomnichowski**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Dan Haney	Summit Beverage		✓	
Carter Mellgaard	MT Beverage		✓	
Shauna Helfert	DOR			✓
Neil Peterson	Gambling Industry		X	
Brad Griffin	MT Restaurant Assn		X	
John Iversin	MT Tavern		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

~~Tuesday, February 12, 2013~~ Wed. Feb. 13, 2013

HB 424 - Allow tasting event by limited sellers of wine consumed off-premises

Sponsor: **Rep. JP Pomnichowski**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Dan Haney	Summit Beverage		✓	
Carter Mollgaard	M+C Beverage		✓	
Shauna Hilfert	DOR		~~X~~	X
Neil Peterson	Gamers Industry		X	
~~Chase~~ Brad Griffin	MT Restaurant Assn		X	
John Iverson	MT Tavern		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Terry Murphy, on March 5, 2013 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Terry Murphy, Chair (R)
Sen. Scott Sales, Vice Chair (R)
Sen. Anders Blewett (D)
Sen. Scott Boulanger (R)
Sen. Robyn Driscoll (D)
Sen. Jennifer Fielder (R)
Sen. Larry Jent (D)
Sen. Cliff Larsen (D)

Members Excused: Sen. Shannon Augare (D), Sen. John Brenden (R), Sen. Chas Vincent (R), Sen. Art Wittich (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 224, 2/27/2013; HB 225, 2/27/2013; HB 345, 2/27/2013

(Chairman Murphy absent from hearing, Vice-Chair Sales assumed Chairman's role)

HEARING ON HB 224

Opening Statement by Sponsor:

00:12:33 Rep. Cary Smith (R), HD 55, opened the hearing on HB 224, Revise appeal bonds in civil cases.

Proponents' Testimony:

00:15:23 Glen Oppel, Montana Chamber of Commerce (MTCC)
EXHIBIT(jus47a01)
EXHIBIT(jus47a02)

00:19:31 Mark Baker, American Tort Reform Association (ATRA)
EXHIBIT(jus47a03)

00:23:03 Aidan Myhre, Kalispell Chamber of Commerce (KCC), Kalispell, Montana

Opponents' Testimony:

00:24:07 Al Smith, Montana Trial Lawyers Association (MTLA)

Informational Testimony: None

Questions from Committee Members and Responses:

00:30:58 Sen. Larsen
00:31:22 Mr. Baker, ATRA
00:33:12 Sen. Blewett
00:33:29 Mr. Oppel, MTCC
00:34:25 Sen. Fielder
00:35:02 Rep. Smith
00:35:13 Mr. Baker
EXHIBIT(jus47a04)

00:36:56 Sen. Blewett
00:37:34 Mr. Smith, MTLA
00:38:39 Rep. Smith

Closing by Sponsor:

00:38:58 Rep. Smith

HEARING ON HB 225

Opening Statement by Sponsor:

00:40:29 Rep. Cary Smith (R), HD 55, opened the hearing on HB 225, Revise interest payments in civil cases.

Proponents' Testimony:

00:42:02 Glen Oppel, Montana Chamber of Commerce (MTCC)
EXHIBIT(jus47a05)
EXHIBIT(jus47a06)

00:43:51 Mark Baker, American Tort Reform Association (ATRA)
EXHIBIT(jus47a07)

00:46:47 Aidan Myhre, Kalispell Chamber of Commerce (KCC), Kalispell, Montana

Opponents' Testimony:

00:47:48 Al Smith, Montana Trial Lawyers Association (MTLA)
EXHIBIT(jus47a08)
EXHIBIT(jus47a09)

Informational Testimony: None

Questions from Committee Members and Responses:

00:55:34 Sen. Blewett
00:56:07 Mr. Baker, ATRA
00:56:46 Sen. Boulanger
00:57:16 Mr. Baker

(Chairman Murphy returned to hearing)

00:58:41 Sen. Fielder
00:59:09 Mr. Baker
01:00:34 Sen. Fielder
01:00:41 Mr. Smith, MTLA

Closing by Sponsor:

01:03:23 Rep. Smith

HEARING ON HB 345

Opening Statement by Sponsor:

01:06:23 Rep. Cary Smith (R), HD 55, opened the hearing on HB 345, Revise false claims act.

Proponents' Testimony:

01:08:59 Kenneth Varns, Assistant Attorney General, Department of Justice, State of Montana
EXHIBIT(jus47a10)

01:16:31 Al Smith, Montana Trial Lawyers Association (MTLA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:18:39 Sen. Sales
01:18:58 Rep. Smith

Closing by Sponsor:

01:21:27 Rep. Smith

ADJOURNMENT

Adjournment: 10:15 A.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT(jus47aad.pdf)

10

SENATE JUDICIARY
EXHIBIT NO. 10
DATE 3/5/13
BILL NO. HB 345

False Claims Act Revisions: House Bill 345

Author: Kenneth Varns, Assistant Attorney General
Medicaid Fraud Control Unit/ Division of Criminal Investigation

I. WHAT IS THE FEDERAL FALSE CLAIMS ACT (FFCA)?

A. History: Passed in Response to contractors cheating the army during the Civil War.

B. Purpose: It is currently used to recuperate money fraudulently taken from the government via the use of claims for services/products that are fraudulent or knowingly false. It is unique in that both a private citizen with knowledge of fraud (known as a whistleblower or qui tam plaintiff) and/or the government can bring a lawsuit under the statute.

C. More Recently: The FCA was significantly strengthened in 1986 and is often used to sue companies that overcharge the Medicaid/Medicare/and other government funded healthcare programs. Often the allegations are that companies encourage Doctors to use their products in a way they weren't intended, which causes increased billing to the Medicaid program.

II. HOW DOES IT WORK?

The FCA encourages private citizens with knowledge of fraudulent activity to bring lawsuits on behalf of the Federal government. These people are called whistleblowers, relators, or qui tam plaintiffs. They are almost always insiders that have information not accessible to the government. They provide valuable insight into fraudulent activity.

Relators must give all information to the government who has 60 days to investigate and decide whether to join in the lawsuit or not (this time can be extended). Relator gets a certain percentage of the recovery, depending on whether the government intervenes or lets the Relator go it on his/her own.

III. HOW DOES MEDICAID WORK?

Medicaid was instituted in 1964, as was Medicare. Medicare is a wholly Federal program whereas Medicaid is a joint Federal/State program. Medicaid is generally designed to pay for health care on behalf of poor people. Each state designs and administers its own program subject to requirements of the Federal government (Centers for Medicare and Medicaid Services or CMS).

In addition to CMS, the State Medicaid programs and the State Medicaid Fraud Control Units are also monitored by United States Health and Human Services (HHS) and the Office of Inspector General (HHS-OIG).

IV. WHAT IS FMAP?

FMAP, or Federal medical assistance percentage, is the Federal share of the money paid on behalf of people on Medicaid. The percentage is different for each state, depending on the per capita income of people within the state. Currently the FMAP for MT is 66%/34% which means of every Medicaid dollar spent, 66% comes from the Federal government.

When money is recovered on behalf of a State for fraud to its Medicaid program, regardless of how the money is recovered—the FMAP portion must be repaid by the State to the Federal government.

V. THE MONTANA FALSE CLAIM ACT (MTFCA)

A. Why was it Enacted?: Lawsuits were being filed on the Federal level alleging that large pharmaceutical companies were cheating the Medicaid system. Recoveries (Millions of dollars) were being recovered, but the States weren't really being represented, since many had no false claim acts. Sometimes the Federal government would include the states, but not always. As a result, several states enacted State FCAs (including MT).

B. How is it Used?: Very similar to the FFCA, the State FCA is used to recover money taken from the government through the use of fraudulent or knowingly false claims. In most cases, it is used against pharmaceutical companies, health supply companies, durable medical equipment companies, etc. for submitting false claims or overcharging the Medicaid program. Since many schemes involve many states, and other federal healthcare programs (such as Medicare) there is often one nationwide lawsuit filed on behalf of the State's and the federal government.

VI. IMPACT OF THE DEFICIT REDUCTION ACT

In 2006, the US Congress passed the DRA of 2005. It created an incentive for States to pass their own FCAs to combat Medicaid fraud. Those states that pass a FCA that parallels the Federal FCA are entitled to keep an extra 10% of the recoveries from such lawsuits, which would have otherwise had to be paid back to the Federal government as part of the FMAP recovery requirement. Most States' (including MT) FCAs include whistleblower, or qui tam provisions.

For example: After deducting the whistleblower's share, $100,000 was recovered by a whistleblower on MT's behalf. Since MT's FMAP is 66%, $66,000 must be paid to the Federal government. With the DRA "bump" of 10%, the percentage becomes 56% or $56,000. By having a DRA compliant statute, MT gains $10,000.

VII. WHY DOES THE STATE FCA NEED TO COMPORT WITH THE FFCA?

One requirement of the DRA was that State FCAs had to be at least as effective in encouraging whistleblower lawsuits as the Federal False Claims Act. HHS-OIG was tasked with reviewing each State's FCA to determine whether it was at least as effective in encouraging whistleblower lawsuits as the Federal FCA. In 2011, OIG determined that MT's FCA was deficient in several areas. As such MT has not qualified for the 10% FMAP "bump." The current revisions are intended to correct that problem.

An informal review by HHS-OIG has indicated that if the recommended changes are made, MT's FCA will, in all likelihood, be found to be compliant.

Montana State Legislature

2013 Session

ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLWING:

- Business Report
- Roll Call – Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports etc.
- Roll Call Votes
- Informational Items
- Witness Statements
- Any Documents; such as;
  - *Petitions if any.
  - *Any and all material handed end after the meeting ends.

The original is on file at the Montana Historical Society and may be viewed there.

Montana Historical Society
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225 N. Roberts
Helena MT 59620-1201

2013 Legislative Scanner Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Tuesday, March 5, 2013
Place: Capitol

Time: 9:00 AM
Room: 303

BILLS and RESOLUTIONS HEARD:

HB 224 - Revise appeal bonds in civil cases - Rep. Cary Smith
HB 225 - Revise interest payments in civil cases - Rep. Cary Smith
HB 345 - Revise false claims act - Rep. Cary Smith

EXECUTIVE ACTION TAKEN:

Comments:

SEN. Terry Murphy, Chair

MONTANA STATE SENATE
2013 JUDICIARY COMMITTEE
ROLL CALL

DATE: 3/5/13

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR TERRY MURPHY	—	
VICE CHAIRMAN, SENATOR SCOTT SALES	—	
SENATOR SHANNON AUGARE		—
SENATOR ANDERS BLEWETT	—	
SENATOR SCOTT BOULANGER	—	
SENATOR JOHN BRENDEN		—
SENATOR ROBYN DRISCOLL	—	
SENATOR JENNIFER FIELDER	—	
SENATOR LARRY JENT	—	
SENATOR CLIFF LARSEN	—	
SENATOR CHAS VINCENT		—
SENATOR ART WITTICH		—

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MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, March 5, 2013
HB 224 - Revise appeal bonds in civil cases
Sponsor: **Rep. Cary Smith**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Glenn Oppel	MT Chamber	X		
Al Smith	MTLA		X	
Geoff Feiss	MT Telecom Assn	/		
Mark Baker	ATRA	X		
Aiden Myhre	Kalispell Chamber	X		
Riley Johnson	NFIB	X		
Linda Wiggers	GF Ptrs/Helena Chambers	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, March 5, 2013
HB 225 - Revise interest payments in civil cases
Sponsor: **Rep. Cary Smith**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Glenn Oppel	MT Chamber	X		
Al Smith	MTLA		X	
Geoff Feist	MT Bldg Assn	✓		
Mark Baker	ATRA	X		
Aidan Myhre	Kalispell Chamber of Comm	X		
Riley Johnson	NFIB	X		
Kinda Wiggers	Grt Falls & Helena Chambers	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, March 5, 2013
HB 345 - Revise false claims act
Sponsor: **Rep. Cary Smith**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Al Smith	MTLA	X		
Ken Varns	Atty. General's Ofc	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Terry Murphy, on April 4, 2013 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Terry Murphy, Chair (R)
Sen. Scott Sales, Vice Chair (R)
Sen. Shannon Augare (D)
Sen. Anders Blewett (D)
Sen. Scott Boulanger (R)
Sen. Robyn Driscoll (D)
Sen. Jennifer Fielder (R)
Sen. Larry Jent (D)
Sen. Cliff Larsen (D)
Sen. Chas Vincent (R)
Sen. Art Wittich (R)

Members Excused: Sen. John Brenden (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HJ 13, 3/19/2013; HB 433, 3/19/2013; SJ 22, 4/19/13
Executive Action:	SJ 22-DO PASS, HB 345-BE CONCURRED IN AS AMENDED, HB 433-BE CONCURRED IN AS AMENDED, HB 74-BE CONCURRED IN, HB 478-BE CONCURRED IN AS AMENDED, HB 403-BE CONCURRED IN AS AMENDED, HB 497-BE CONCURRED IN AS AMENDED, HB 438-REMOVE FROM THE TABLE/FAILED, HB 555-RECONSIDER THE ACTION/FAILED TIE VOTE 6-6

HEARING ON HB 433

Opening Statement by Sponsor:

00:21:01 Rep. Jesse O'Hara (R), HD 18, opened the hearing on HB 433, Generally revise laws regarding registration of sexual and violent offenders.

Proponents' Testimony:

00:22:22 John Parker, Cascade County Attorney, Great Falls, Montana, Montana County Attorneys Association (MCAA)
00:24:32 Leo Gallagher, Lewis and Clark County Attorney, Helena, Montana, President, Montana County Attorneys Association (MCAA)
00:28:24 Bill Fulbright, Ravalli County Attorney, Hamilton, Montana
00:31:59 Jed Fitch, Beaverhead County Attorney, Dillon, Montana
00:34:18 Jon Bennion, Deputy Chief, Attorney General, Department of Justice (DOJ), State of Montana
00:35:31 Abigail St. Lawrence, Montana Association of Churches (MAC)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:37:31 Sen. Wittich
00:37:48 Mr. Bennion, DOJ
00:39:47 Mr. Parker, MCCA
00:43:37 Sen. Vincent
00:44:11 Mr. Parker
00:44:56 Sen. Boulanger
00:45:22 Mr. Parker
00:45:58 Sen. Wittich
00:46:47 Mr. Parker
00:47:10 Sen. Augare
00:47:56 Mr. Bennion
00:48:58 Sen. Murphy
00:49:49 Mr. Gallagher, MCCA
00:52:06 Mr. Bennion

Closing by Sponsor:

00:52:34 Rep. O'Hara

HEARING ON HJ 13

Opening Statement by Sponsor:

00:53:51 Rep. Forrestina (Frosty) Calf Boss Ribs (D), HD 15, opened the hearing on HJ 13, Joint Resolution to call on Congress to pass the Violence Against Women Act.

Proponents' Testimony:

00:55:53 Sarah Rossi, Public Policy Director, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
00:56:47 Linda Gryczan, Montana Women's Lobby (MWL)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:57:42 Sen. Fielder
00:58:27 Rep. Calf Boss Ribs

Closing by Sponsor:

00:59:26 Rep. Calf Boss Ribs

01:04:51 Recess
01:34:42 Reconvene

HEARING ON SJ 22

Opening Statement by Sponsor:

01:34:53 Sen. Larry Jent (D), SD 32, opened the hearing on SJ 22, Interim study on family law procedure alternatives.

Proponents' Testimony:

01:37:19 Judge Beth Baker, Montana Supreme Court, Department of Justice (DOJ), State of Montana
01:40:11 Corbin Howard, Family Law Attorney, Billings, Montana
EXHIBIT(jus70a01)
EXHIBIT(jus70a02)

01:43:03 Christopher Manos, Executive Director, State Bar of Montana (SBM)
01:43:59 Ed Bartlett, Montana Judges Association (MJA), Billings, Montana

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:45:18 Sen. Fielder
01:45:54 Mr. Bartlett, MJA
01:47:59 Sen. Murphy
01:48:19 Judge Baker, DOJ

Closing by Sponsor:

01:50:14 Sen. Jent

(Sen. Blewett absent from the hearing)

EXECUTIVE ACTION ON SJ 22

01:51:3 **Motion/Vote:** Sen. Larsen moved that **SJ 22 DO PASS**. Motion carried 12-0 by roll call vote. Sen. Blewett and Sen. Brenden voted by proxy.

EXECUTIVE ACTION ON HB 345

01:53:07 **Motion:** Sen. Wittich moved that **HB 345 BE CONCURRED IN**.

(Sen. Blewett returned to hearing)

01:53:25 **Motion:** Sen. Wittich moved that **HB 345 BE AMENDED**.
EXHIBIT(jus70a03)

Discussion:

01:53:42 Julianne Burkhardt, Legislative Services Division (LSD)
01:54:24 Sen. Wittich
01:57:50 Sen. Jent
01:58:44 Sen. Blewett

01:59:18 **Vote:** Motion carried 12-0 by roll call vote. Sen. Brenden voted by proxy.

02:02:34 **Motion:** Sen. Wittich moved that **HB 345 BE CONCURRED IN AS AMENDED**.

Discussion:

02:02:45 Sen. Blewett
02:03:09 Sen. Wittich

02:04:20 **Vote:** Motion carried 12-0 by roll call vote. Sen. Brenden voted by proxy. Sen. Jent will carry the bill.

EXECUTIVE ACTION ON HB 438

02:04:48 **Motion:** Sen. Wittich moved that **HB 438 BE REMOVED FROM TABLED**.

Discussion:

02:06:29 Sen. Blewett
02:07:07 Sen. Jent

02:07:47 **Vote:** Motion failed 5-6 by roll call vote with Sen. Boulanger, Sen. Fielder, Sen. Sales, Sen. Vincent and Sen. Wittich voting aye. (Present and voting members only)

EXECUTIVE ACTION ON HB 433

02:10:19 **Motion:** Sen. Driscoll moved that **HB 433 BE CONCURRED IN**.

Discussion:

02:11:12 Sen. Wittich
02:12:05 Sen. Driscoll
02:12:19 Ms. Burkhardt, LSD

02:12:56 **Motion/Vote:** Sen. Wittich moved that **HB 433 BE AMENDED** with a **CONCEPTUAL AMENDMENT FOR PAGE 2, LINE 8, INSERT "SUBSEQUENT."** Motion carried 8-4 by roll call vote with Sen. Augare, Sen. Driscoll, Sen. Jent and Sen. Larsen voting no. Sen. Brenden voted by proxy.

02:14:02 **Motion/Vote:** Sen. Driscoll moved that **HB 433 BE CONCURRED IN AS AMENDED**. Motion carried 12-0 by roll call vote. Sen. Brenden voted by proxy. Sen. Driscoll will carry the bill.

EXECUTIVE ACTION ON HB 74

02:16:19 **Motion:** Sen. Blewett moved to **RECONSIDER THE ACTION** on **HB 74**.

Discussion:

02:16:57 Sen. Murphy
02:17:11 Sen. Sales
02:17:31 Ms. Burkhardt
02:17:59 Sen. Wittich

02:19:11 **Vote:** Motion carried 7-5 by roll call vote with Sen. Fielder, Sen. Murphy, Sen. Sales, Sen. Vincent and Sen. Wittich voting no. Sen. Brenden voted by proxy.

Discussion:

02:20:08 Ms. Burkhardt
02:20:10 Sen. Murphy

02:20:13 **Motion:** Sen. Blewett moved that **HB 74 BE CONCURRED IN**.

Discussion:

02:20:27 Sen. Wittich

02:21:11 **Vote:** Motion carried 7-5 by roll call vote with Sen. Fielder, Sen. Murphy, Sen. Sales, Sen. Vincent and Sen. Wittich voting no. Sen. Brenden voted by proxy. Sen. Blewett will carry the bill.

EXECUTIVE ACTION ON HB 478

02:22:03 **Motion:** Sen. Wittich moved that **HB 478 BE CONCURRED IN**.

02:22:14 **Motion:** Sen. Wittich moved that **HB 478 BE AMENDED**.
EXHIBIT(jus70a04)

Discussion:

02:24:42 Ms. Burkhardt
02:24:58 Sen. Fielder
02:25:36 Sen. Augare
02:26:50 Sen. Larsen
02:27:25 Sen. Wittich
02:28:59 Sen. Fielder
02:30:21 Sen. Blewett

02:30:28 **Vote:** Motion carried 7-5 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Driscoll, Sen. Jent and Sen. Larsen voting no. Sen. Brenden voted by proxy.

02:31:50 **Motion:** Sen. Wittich moved that **HB 478 BE CONCURRED IN AS AMENDED**.

Discussion:

02:32:04 Sen. Blewett
02:33:11 Sen. Augare

02:33:23 **Vote:** Motion carried 11-1 by roll call vote with Sen. Blewett voting no. Sen. Brenden voted by proxy. Sen. Arntzen will carry the bill.

EXECUTIVE ACTION ON HB 403

02:34:35 **Motion:** Sen. Blewett moved that **HB 403 BE CONCURRED IN**.

Discussion:

02:34:41 Sen. Fielder
02:35:30 Sen. Murphy

02:35:57 **Motion:** Sen. Wittich moved that **HB 403 BE AMENDED** with a **CONCEPTUAL AMENDMENT FOR PAGE 1, LINE 30, REDUCING FEE TO "25 CENTS"**.

Discussion:

02:37:58 Ms. Burkhardt
02:38:07 Sen. Wittich
02:38:57 Sen. Larsen
02:40:08 Sen. Wittich
02:42:42 Sen. Larsen

02:43:20 Sen. Wittich
02:44:40 Sen. Driscoll

02:45:24 **Vote:** Motion carried 9-3 by roll call vote with Sen. Augare, Sen. Driscoll and Sen. Murphy voting no. Sen. Brenden voted by proxy.

02:45:35 **Motion:** Sen. Wittich moved that **HB 403 BE CONCURRED IN AS AMENDED**.

Discussion:

02:45:44 Sen. Blewett
02:46:09 Sen. Fielder
02:46:20 Sen. Blewett

02:46:42 **Vote:** Motion carried 12-0 by roll call vote. Sen. Brenden voted by proxy. Sen. Murphy will carry the bill.

EXECUTIVE ACTION ON HB 497

02:47:58 **Motion:** Sen. Fielder moved that **HB 497 BE CONCURRED IN**.

02:48:18 **Motion:** Sen. Fielder moved that **HB 497 BE AMENDED**.
EXHIBIT(jus70a05)

Discussion:

02:49:37 Sen. Blewett

(Sen. Boulanger absent from the hearing)

02:50:55 **Vote:** Motion carried 11-1 by roll call vote with Sen. Blewett voting no. Sen. Boulanger and Sen. Brenden voted by proxy.

02:50:57 **Motion:** Sen. Fielder moved that **HB 497 BE CONCURRED IN AS AMENDED**.

Discussion:

02:51:13 Sen. Blewett
02:52:23 Sen. Fielder

02:53:36 Sen. Larsen
02:54:20 Sen. Blewett
02:55:42 Sen. Wittich
02:57:26 Sen. Jent

(Sen. Boulanger returned to hearing)

02:57:54 **Vote:** Motion carried 9-3 by roll call vote with Sen. Blewett, Sen. Driscoll and Sen. Larsen voting no. Sen. Brenden voted by proxy. Sen. Fielder will carry the bill.

EXECUTIVE ACTION ON HB 555

02:58:44 **Motion:** Sen. Jent moved to **RECONSIDER THE MOTION** on **HB 555**.

Discussion:

03:02:13 Sen. Murphy

03:03:09 **Vote:** Motion failed 6-6 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Driscoll, Sen. Fielder, Sen. Jent and Sen. Larsen voting aye. Sen. Brenden voted by proxy.

ADJOURNMENT

Adjournment: 11:50 A.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT(jus70aad.pdf)

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 4/4/13
BILL NO. HB345

Amendments to House Bill No. 345
3rd Reading Copy

Requested by Senator Art Wittich

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
March 28, 2013 (7:09am)

1. Page 4.
Following: line 13
Insert: "(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or Title 2, chapter 6, is not a public disclosure for purposes of this section."
Renumber: subsequent subsections

2. Page 4, line 24.
Following: "STATE"
Insert: "unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises"

3. Page 5, line 8.
Following: line 8
Insert: "(8) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity."

- END -

Montana State Legislature

2013 Session

ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLWING:

- **Business Report**
- **Roll Call – Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports etc.**
- **Roll Call Votes**
- **Informational Items**
- **Witness Statements**
- **Any Documents; such as;**
  - ***Petitions if any.**
  - ***Any and all material handed end after the meeting ends.**

The original is on file at the Montana Historical Society and may be viewed there.

Montana Historical Society
Archives
225 N. Roberts
Helena MT 59620-1201

2013 Legislative Scanner Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Thursday, April 4, 2013
Place: Capitol

Time: 9:00 AM
Room: 303

BILLS and RESOLUTIONS HEARD:

HB 433 - Generally revise laws regarding registration of sexual and violent offenders - Rep. Jesse O'Hara
HJ 13 - Joint Resolution to call on Congress to pass the Violence Against Women Act - Rep. Forrestina (Frosty) Calf Boss Ribs
SJ 22 - Interim study on family law procedure alternatives - Sen. Larry Jent

EXECUTIVE ACTION TAKEN:

SJ 22-DO PASS
HB 345-BE CONCURRED IN AS AMENDED
HB 433-BE CONCURRED IN AS AMENDED
HB 478-BE CONCURRED IN AS AMENDED
HB 403-BE CONCURRED IN AS AMENDED
HB 497-BE CONCURRED IN AS AMENDED
HB 74-BE CONCURRED IN

HB 438-REMOVE FROM THE TABLE/FAILED
HB 55-RECONSIDER THE ACTION/FAILED/TIE VOTE

Comments:

SEN. Terry Murphy, Chair

MONTANA STATE SENATE
2013 JUDICIARY COMMITTEE
ROLL CALL

DATE: 4/4/13

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR TERRY MURPHY	✓	
VICE CHAIRMAN, SENATOR SCOTT SALES	✓	
SENATOR SHANNON AUGARE	✓	
SENATOR ANDERS BLEWETT	✓	
SENATOR SCOTT BOULANGER	✓	
SENATOR JOHN BRENDEN		✓
SENATOR ROBYN DRISCOLL	✓	
SENATOR JENNIFER FIELDER	✓	
SENATOR LARRY JENT	✓	
SENATOR CLIFF LARSEN	✓	
SENATOR CHAS VINCENT	✓	
SENATOR ART WITTICH	✓	

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Joint Resolution 22** (first reading copy -- white) **do pass**.

Signed: _____
Senator Terry Murphy, Chair

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required __

SJ0022001SC.swr

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 345** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Terry Murphy, Chair

To be carried by Senator Larry Jent

And, that such amendments read:

1. Page 4.
Following: line 13
Insert: "(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or Title 2, chapter 6, is not a public disclosure for purposes of this section."
Renumber: subsequent subsections

2. Page 4, line 24.
Following: "STATE"
Insert: "unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises"

3. Page 5, line 8.
Following: line 8
Insert: "(8) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had

Committee Vote:
Yes 12, No 0
Fiscal Note Required __

HB0345001SC13542.swr

if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity."

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 433** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Terry Murphy, Chair

To be carried by Senator Robyn Driscoll

And, that such amendments read:

1. Page 2, line 8.
Following: "any"
Insert: "subsequent"

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required __

HB0433001SC12924.swr

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 74** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Terry Murphy, Chair

To be carried by Senator Anders Blewett

- END -

Committee Vote:
Yes 7, No 5
Fiscal Note Required __

HB0074001SC13620.swr

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 478** (third reading copy -- blue) **be concurred in as amended**.

Signed: Terry Murphy
Senator Terry Murphy, Chair

To be carried by Senator Elsie Arntzen

And, that such amendments read:

1. Title, page 1, line 7 through line 9.
Strike: line 7 through "APPROPRIATION;" on line 9

2. Page 1, line 16 through page 2, line 24.
Strike: section 1 in its entirety
Renumber: subsequent sections

3. Page 5, line 15.
Strike: "4"
Insert: "3"

4. Page 8, line 28 through page 11, line 4.
Strike: section 9 through section 11 in their entirety
Renumber: subsequent sections

5. Page 11, line 11.
Strike: "4"
Insert: "3"
Strike: "5"

Committee Vote:
Yes 11, No 1
Fiscal Note Required __

HB0478002SC12925.swr

Insert: "4"

6. Page 13, line 3.
Strike: "4"
Insert: "3"

7. Page 13, line 5.
Strike: "5"
Insert: "4"

8. Page 15, line 7.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

9. Page 16, line 4.
Strike: "4"
Insert: "3"

10. Page 16, line 5.
Strike: "5"
Insert: "4"

11. Page 17, line 25.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

12. Page 18, line 9.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

13. Page 18, line 17.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

14. Page 20, line 5.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

15. Page 20, line 25.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

16. Page 22, line 19.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

17. Page 23, line 16.
Strike: "4"
Insert: "3"

18. Page 23, line 17.
Strike: "5"
Insert: "4"

19. Page 24, line 7.
Strike: "4"
Insert: "3"
Strike: "5"
Insert: "4"

20. Page 24, line 27.
Strike: "4" through "11"
Insert: "3 and 4"

21. Page 24, line 29.
Strike: "4" through "11"
Insert: "3 and 4"

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 403** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Terry Murphy, Chair

To be carried by Senator Terry Murphy

And, that such amendments read:

1. Page 1, line 30.
Strike: "50"
Insert: "25"

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required __

HB0403001SC13755.swr

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 497** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Terry Murphy, Chair

To be carried by Senator Jennifer Fielder

And, that such amendments read:

1. Page 1, line 12.
Strike: ":"

2. Page 1, line 13 through 14.
Strike: "(a)"
Following: "70-24-103"
Strike: remainder of line 13 through line 14
Insert: "unless the landlord is a participant in the party, event, or gathering that results in a violation of a social host ordinance."

3. Page 1, lines 18 and 19.
Following: "gatherings"
Strike: remainder of line 18 through "beverage" on line 19

- END -

Committee Vote:
Yes 9, No 3
Fiscal Note Required __

HB0497001SC15235.swr

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO SJ22 MOTION NO. 1

MOTION: Do Pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT	—		—
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

12/0

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB345 MOTION NO. 2

MOTION: amendment 345.04 AJB 3/28/13 7:09am

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

12/0

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB 345 MOTION NO. _____

MOTION: Be Concurred In As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

12/0

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB 438 MOTION NO. 1

MOTION: Remove from table

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—	—	—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE		—	
SENATOR ANDERS BLEWETT		—	
SENATOR ROBYN DRISCOLL		—	
SENATOR LARRY JENT		—	
SENATOR CLIFF LARSEN		—	
CHAIRMAN, SENATOR TERRY MURPHY		—	

5/6 (Present & Voting)

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB433 MOTION NO. 1

MOTION: Be Amended p 2 Lene 8 "insert - Subsequent"

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE		—	
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL		—	
SENATOR LARRY JENT		—	
SENATOR CLIFF LARSEN		—	
CHAIRMAN, SENATOR TERRY MURPHY			

8/4

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB438 MOTION NO. 3

MOTION: Be Concurred Do Pass Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

12/0 (Driscoll)

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB74 MOTION NO. 1

MOTION: Reconsider

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES		—	
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER		—	
SENATOR CHAS VINCENT		—	
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH		—	
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY		—	

7/5

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB74 MOTION NO. 2

MOTION: Be Concurred In

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES		/	
SENATOR JOHN BRENDEN	/		
SENATOR JENNIFER FIELDER		/	
SENATOR CHAS VINCENT		/	
SENATOR SCOTT BOULANGER	/		
SENATOR ART WITTICH		/	
SENATOR SHANNON AUGARE	/		
SENATOR ANDERS BLEWETT	/		
SENATOR ROBYN DRISCOLL	/		
SENATOR LARRY JENT	/		
SENATOR CLIFF LARSEN	/		
CHAIRMAN, SENATOR TERRY MURPHY		/	

7/5 (Blewett)

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB 478 MOTION NO. 2

MOTION: amendment 478.01

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE		—	
SENATOR ANDERS BLEWETT		—	
SENATOR ROBYN DRISCOLL		—	
SENATOR LARRY JENT		—	
SENATOR CLIFF LARSEN		—	
CHAIRMAN, SENATOR TERRY MURPHY	—		

4/5

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB 478 MOTION NO. 3

MOTION: Be Concurred In As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT		—	
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

11/1 (Carlson)

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB403 MOTION NO. 2

MOTION: amendment (conceptual p 1 line 30 25f)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—	—	
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL		—	
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY		—	

9/3

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB403 MOTION NO. 1

MOTION: Be Concurred In As Amend

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

12/0 (Murphy)

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB497 MOTION NO. 2

MOTION: amendment 497.01 ajb

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		—
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT		—	
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

11/

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB497 MOTION NO. 3

MOTION: Be Concurred In As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT		—	
SENATOR ROBYN DRISCOLL		—	
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN		—	
CHAIRMAN, SENATOR TERRY MURPHY	—		

9/3 (Fielder)

MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 4/4/13 BILL NO HB555 MOTION NO. 1

MOTION: Reconsider

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES		—	
SENATOR JOHN BRENDEN		—	—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT		—	
SENATOR SCOTT BOULANGER		—	
SENATOR ART WITTICH		—	
SENATOR SHANNON AUGARE	—		
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY		—	

6/6

SENATE PROXY

I, Senator Blewett, hereby authorize Senator LARSEN to vote my proxy before the Senate JUDICIARY meeting held on _____, 2013.

Senator Signature (Sen. Anders Blewett)

4/4/13
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No

SENATE PROXY

I, Senator Brenden, hereby authorize Senator SALES to vote my proxy before the Senate JUDICIARY meeting held on _____, 2013.

John C. Brenden
Senator Signature (Sen. John Brenden)

4/4/13
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No

SENATE PROXY

I, Senator Boulanger, hereby authorize Senator SALES to vote my proxy before the Senate JUDICIARY meeting held on _____, 2013.

Senator Signature (Sen. Scott Boulanger)

4/4/13
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, April 4, 2013
HB 433 - Generally revise laws regarding registration of sexual and violent offenders
Sponsor: **Rep. Jesse O'Hara**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Jon Bennion	Attorney General	✓		
LEO GALLAGHER	MCAA	✓		
Jed C. Fitch	Beaverhead County Atty	✓		
TIM FOX	MT Dept. of Justice	✓		
John Parke	Cascade County Attorney MCAA	✓		
Bill Fulbright	Ravalli Co. Atty & MCAA	✓		
Abigail St. Lawrence	Mont. Assoc. of Churches	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, April 4, 2013
HJ 13 - Joint Resolution to call on Congress to pass the Violence Against Women Act
Sponsor: **Rep. Forrestina (Frosty) Calf Boss Ribs**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Linda Gryczan	MT Women's Lobby	X		
Sarah Rossi	MCADSV	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, April 4, 2013
SJ 22 - Interim study on family law procedure alternatives
Sponsor: **Sen. Larry Jent**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
CORBIN HOWARD	SELF	X		
Christopher Manos	State Bar of MT	X		
Ed BARTHLET	MT JUDGES ASSOC.	X		
Beth Baker	MT Supreme Court	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 345

Call to Order: Chair Art Wittich, on April 18, 2013 at 3:30 P.M., in Room 405 Capitol

ROLL CALL

Members Present:

Sen. Art Wittich, Chair (R)
Rep. Cary Smith, Chair (R)
Sen. Jennifer Fielder (R)
Rep. Steve Fitzpatrick (R)
Sen. Larry Jent (D)
Rep. Tom Steenberg (D)

Members Excused: None

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Services Division (LSD)
Charlene Devine, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Executive Action: Recommend Adoption of Free Conference Committee Report

EXECUTIVE ACTION ON HB 345

Discussion:

00:22:28 Sen. Wittich
EXHIBIT(frs82hb0345a01)
EXHIBIT(frs82hb0345a02)

00:23:17 **Motion/Vote**: Rep. Smith moved that **HB 345 BE AMENDED**. Motion carried unanimously by roll call vote.

Note: In lieu of motion, the signed Committee Report indicates all committee members present and voting recommend that **THE FREE CONFERENCE COMMITTEE REPORT BE ADOPTED**.

ADJOURNMENT

Adjournment: 3:40 P.M.

_____
Charlene Devine, Secretary

Additional Documents:

EXHIBIT(frs82hb0345aad.pdf)

SENATE New Conference
Exhibit No. 1
Date 4-18-2013
Bill No. HB 345

Amendments to House Bill No. 345
Reference Copy

Requested by Representative Cary Smith

For the House Free Conference Committee

Prepared by Julianne Burkhardt
April 16, 2013 (11:47am)

1. Page 2, line 21.
Strike: "$6,000"
Insert: "$5,500"

2. Page 2, line 22.
Strike: "$12,000"
Insert: "$11,000"

3. Page 3, line 19.
Strike: "$6,000"
Insert: "$5,500"
Strike: "$12,000"
Insert: "$11,000"

4. Page 4, line 24.
Following: line 24
Insert: "(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410."

- END -

SENATE Free Conference Com.
Exhibit No. 2
Date 4-18-2013
Bill No. HB 345

Amendments to House Bill No. 345
Reference Copy

Requested by Representative Cary Smith

For the House Free Conference Committee

Prepared by Julianne Burkhardt
April 16, 2013 (11:51am)

1. Title, page 1, line 8.
Following: ";"
Insert: "PROVIDING A REPORTING REQUIREMENT;"

2. Page 8.
Following: line 25
Insert: "NEW SECTION. **Section 7. Reporting.** Beginning February 15, 2014, and by February 15 of each year, the attorney general shall submit to the law and justice interim committee a report containing the following information:

(1) the number of cases filed under the Montana False Claims Act, Title 17, chapter 8, part 4, that were pending in the state during the previous calendar year;

(2) the number of cases filed under the Montana False Claims Act that were settled during the previous calendar year;

(3) the number of cases filed under the Montana False Claims Act in which judgment was entered during the previous calendar year;

(4) the total proceeds paid to the state and the total proceeds paid to the qui tam plaintiffs in cases filed under the Montana False Claims Act during the previous calendar year; and

(5) the number of qui tam cases pending in other jurisdictions involving the state in the previous calendar year."

Renumber: subsequent sections

- END -

Montana State Legislature

2013 Session

ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLWING:

- Business Report
- Roll Call – Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports etc.
- Roll Call Votes
- Informational Items
- Witness Statements
- Any Documents; such as;
  - *Petitions if any.
  - *Any and all material handed end after the meeting ends.

The original is on file at the Montana Historical Society and may be viewed there.

Montana Historical Society
Archives
225 N. Roberts
Helena MT 59620-1201

2013 Legislative Scanner Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION

SENATE FREE CONFERENCE COMMITTEE

Date: Thursday, April 18, 2013
Place: Capitol

Time: 3:30 P.M.
Room: 405

BILLS and RESOLUTIONS HEARD:

EXECUTIVE ACTION TAKEN:

HB 345 - Revise false claims act - Rep. Cary Smith

Comments:

Art Wittich. , Chair

MONTANA STATE SENATE

ROLL CALL

FREE CONFERENCE COMMITTEE

Date: 4-18-13 (HB)/SB No. 345

NAME	PRESENT	ABSENT/ EXCUSED
Sen. Chair Wittich	✓	
Sen. Fielder	✓	
Sen. Jent	✓	
Rep. C. Smith	✓	
Rep. Fitzpatrick	✓	
Rep. Steinberg	✓	

Staff: Julianne Burkhardt

Secretary: Charlene Dennis

C. DeVine

FREE CONFERENCE COMMITTEE
on House Bill 345
Report No. 001, April 18, 2013

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **House Bill 345** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Sen. Art Wittich Chair

Sen. Jennifer Fielder

Sen. Larry Jent

Amendment Coordinator

For the House:

Rep. Cary Smith Vice Chair

Rep. Steve Fitzpatrick

Rep. Tom Steenberg

And, recommend that **House Bill 345** (reference copy -- salmon) be amended as follows:

1. Title, page 1, line 8.
Following: ";"
Insert: "PROVIDING A REPORTING REQUIREMENT;"

2. Page 2, line 21.
Strike: "$6,000"
Insert: "$5,500"

3. Page 2, line 22.
Strike: "$12,000"

ADOPT
REJECT

Amendment # HB 345001

Insert: "$11,000"

4. Page 3, line 19.
Strike: "$6,000"
Insert: "$5,500"
Strike: "$12,000"
Insert: "$11,000"

5. Page 5
Following: line 11
Insert: "(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410."
Renumber: subsequent subsection

6. Page 9, line 2.
Following: line 2
"NEW SECTION. **Section 7. Reporting.** Beginning February 15, 2014, and by February 15 of each year, the attorney general shall submit to the law and justice interim committee a report containing the following information:

(1) the number of cases filed under the Montana False Claims Act, Title 17, chapter 8, part 4, that were pending in the state during the previous calendar year;

(2) the number of cases filed under the Montana False Claims Act that were settled during the previous calendar year;

(3) the number of cases filed under the Montana False Claims Act in which judgment was entered during the previous calendar year;

(4) the total proceeds paid to the state and the total proceeds paid to the qui tam plaintiffs in cases filed under the Montana False Claims Act during the previous calendar year; and

(5) the number of qui tam cases pending in other jurisdictions involving the state in the previous calendar year."
Renumber: subsequent sections

- END -

MONTANA STATE SENATE

ROLL CALL VOTE

FREE CONFERENCE COMMITTEE

Date: 4-18-2013 HB/SB No. 345

NAME	AYE	NO
Sen. Chair Wittich	✓	
Sen. Fielder	✓	
Sen. Jent	✓	
Rep. C. Smith	✓	
Rep. Fitzpatrick	✓	
Rep. Steinberg	✓	

Vote by chamber:

Senate: Aye 3 No 0

House: Aye 3 No 0

MONTANA STATE SENATE

VISITORS REGISTER

CONFERENCE/FREE CONFERENCE COMMITTEE on HB/SB No. 345

Please print ~ Please print ~ Please print

NAME	Representing	*Support*	*Oppose*	*Info*
DENNIS IVERSON	PhRMA	X amend		

Please leave prepared testimony with Secretary.